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Federal Regulation as a Panacea for Utility Rates

Would not the same legal and economic restrictions apply to the regulatory commissions in the nation's Capital as to the commissions in the states?

BY HENRY C. SPURR

AT the public ownership conference at Los Angeles last September, Senator Clarence C. Dill of Washington declared that only the Federal government can protect the American people against excessive rates for electric power.

In opening his address, referring to regulation—not to government ownership—Senator Dill said:

> "The public welfare demands that Congress protect the American people against excessive rates for electric power. City governments and state commissions are unable to do so. The power business is no longer local, but national. Great mergers control the production and sale of 90 per cent of the power used in the United States. Only the Federal government can effectively control them."

It is difficult, in reading the address, to determine whether Senator Dill meant that only the Federal government can protect the public from the *possibility* of excessive rates or from rates that are *at present* excessive. But he also said in the course of his speech:

> "Congress should direct the Power Commission to fix rates for interstate power on the basis of actual investment for the protection and distribution of power; that is the only sound basis for rate making by a power company."

It appears probable, therefore, that he believes that present rates are excessive. This at any rate is the reasonable presumption.

UNDER state commission regulation reasonableness of rates is determined on the basis of the cost of the service, which, of course, includes the cost of capital employed in the business. The rates of many electric companies have been under investigation and have been fixed by state commissions on the cost basis. To say that notwithstanding this fact existing rates, without exception, are excessive, is to give the lie to these commissions —unless what is meant is that the rates are too high because they produce a return on the present value of the company's property rather than the actual investment in it.

The Federal courts have established the rule that utilities are entitled to earn a return on the present value of their property. State commissioners, who are under solemn obligation to support the Constitution of the United States, are bound to follow these decisions. Those who believe the court decisions wrong, therefore, say that state commissions are powerless to protect the ratepayers from excessive rates because of these Federal court decisions.

IN many cases, however, probably in the majority of cases, electric rates have been fixed without reference to the constitutional right of the companies to a fair return on the full present value of their property, and to say in spite of that fact that these rates are excessive is to question the integrity or ability of the state commissioners.

However, what is often meant by the broadside charge that electric rates are excessive under state commission regulation is merely that they are excessive because not based on the prudent investment in the property.

This seems to be what Senator Dill was driving at as he said Congress should direct the Federal Power Commission to fix rates for interstate power on the basis of actual investment for the production and distribution of power.

But Congress has no more authority to base the return on actual investment than the state legislatures have. The Constitution is equally binding on Congress. If there is any course by which Congress can evade the law of the Constitution that utility companies are entitled to earn a return on the present value of their property, it would seem that the same door would be open to state legislatures. Some economists and publicists who believe in the equity of the prudent investment rule would if they could deny utilities access to the Federal courts where the value rule is upheld; but if it is impossible to keep state commission cases out of the Federal courts on Federal constitutional questions, it is hard to see how it would be possible to keep Federal commission cases out of the same courts. There would, indeed, be no other place to which they could go.

Therefore, so far as the application of the prudent investment rule in preference to the value rule in rate making is concerned, no advantage would be gained by substitution of Federal regulation for state regulation.

BUT if there is any zone of regulation of the electric industry which is beyond the jurisdiction of state commissions and is within the jurisdiction of the Federal govern-

ment, it must be conceded that only the Federal government could exercise control within that zone. Senator Dill says that great mergers control the production and sale of 90 per cent of the power used in the United States. It is unnecessary to inquire into the accuracy of that statement. Conceding merely for the purpose of argument that it is true, it does not follow that only the Federal government could effectively regulate electric rates.

In the first place Congress has power to regulate only that part of electric service which constitutes interstate commerce. The great bulk of the electric business is purely state business over which the Federal government has no control. State commissions now have power to regulate the rates of a large part even of the interstate electric business, which is not as Senator Dill assumes national, but purely local. This has already been decided by the courts. It is only the wholesale interstate rates that the Federal government under existing laws alone has power to regulate. The great question at the present time is whether the Federal government shall assume control of certain interstate electric service, which has been regarded as local and which is now under the regulation of the states where they have cared to assume jurisdiction; and whether the Federal government, once having asserted jurisdiction in this limited field, shall, on the theory of preventing discrimination against interstate business, extend its powers over electric business that is purely state or local.

WHAT do those who favor the substitution of Federal regulation for state regulation hope to gain by it? There are two limitations to the rate-making power of either Federal or state commissions. One is that the rate must not be so low as to be confiscatory. That is a limitation established by the United States Constitution as interpreted by the Supreme Court. The other is that the rate must not be more than the service is worth. That is the limitation established by economic law. Between these two boundaries the commissions have the discretion of determining what reasonable charges for particular services are. Is there any reason to believe that a Federal commission would treat ratepayers any better than state commissions in the exercise of this discretion?

So far as the personnel of the commissions are concerned does it make any difference whether commissioners hold office under the Federal or under the state governments? Is a Federal office holder any more virtuous than a state office holder? Is there any more reason to believe that a Federal commissioner would be more likely to safeguard the interests of the

¶ "Is *there any more reason to believe that a Federal commissioner would be more likely to safeguard the interests of the ratepayers than a state commissioner? Are Federal commissioners closer to the people concerned than the state commissioners? Very few persons, if any, would say so.*"

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IT has been commonly thought that the further office holders are from the people the less likely they are to be unduly influenced by their desires. If that is true, how can it be supposed that local complaints would receive more favorable attention from a Federal commission than from a state commission?

Do Federal commissions always protect the public if the public welfare is measured solely by low rates, as some critics of regulation seem to think?

In one case the Interstate Commerce Commission ordered an increase for the railroads, in the group of which Wisconsin railroads were a part, of 35 per cent in interstate freight rates and 20 per cent in interstate passenger fares, and excess baggage charges, and a surcharge upon passengers in sleeping cars amounting to 50 per cent of the charge for space in those cars.[1] There would seem to be no more assurance that rates may not be increased by a Federal commission than by a state commission. The Interstate Commerce Commission does not hesitate to raise rates as well as to lower them, if it believes that increases are fair to the companies and the ratepayers.

Now, think what would have happened to the good name of the Wisconsin commission if it had ordered such an increase of rates in that state no matter how just its decision might have been. It was far easier for the Federal commission far removed from Wisconsin to have done it without causing an uproar than it would have been for the Wisconsin commission which was in much closer touch with the shippers of that state.

THE state commissioners have been united in their opposition to any surrender of the state power of regulation in the electrical field in favor of Federal regulation owing to their experience with Federal regulation of railroad rates. Those who favor Federal regulation say that the state commissioners are more interested in their jobs than in the welfare of the ratepayer; but that is very unfair to the state commissioners. They undoubtedly believe that the ratepayers' interest would be better preserved under state regulation than under Federal regulation; that there would be more likelihood of low rates under state than under Federal regulation.

Theoretically this would seem to be so if we assume that state commissioners are as honest as Federal commissioners and have the interests of the ratepayers as much at heart, because the state commissioners would be in closer touch with the local people. This theory in truth is not without foundation.

The Federal Transportation Act of 1920 provides, among other things, what the Interstate Commerce Commission may do in case of conflict between the Federal and state authorities over the fixing of rates which may discriminate against interstate commerce. The act calls for an investiga-

[1] Ex parte 74, Re Increased Rates (1920) 58 Inters. Com. Rep. 220.

The Same Laws that Guide the State Commissions Guide the Federal Commissions

"CONGRESS has no more authority to base the return on actual investment than the state legislatures have. The Constitution is equally binding on Congress. If there is any course by which Congress can evade the law of the Constitution that utility companies are entitled to earn a return on the present value of their property, it would seem that the same door would be open to state legislatures."

tion, and then provides as follows:

> "Whenever in any such investigation the commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or practice causes *any undue or unreasonable advantages, preference, or prejudice as between persons or localities in interstate commerce, on the one hand, and interstate or foreign commerce, on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful,* it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or practice thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and practices shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any state or the decision or order of any state authority to the contrary notwithstanding." [2]

THERE would, of course, be no necessity for this provision if the rates fixed by the state commissions were always higher than the rates established by the Interstate Commerce Commission, because the higher state rates would not discriminate against interstate commerce. It would be only lower state rates that the interstate shippers would complain against. If the interstate rates fixed by the Federal commission were always lower than the state rates fixed by the state commissions, it would be to the advantage of the interstate shippers. Therefore, in passing this law Congress must have had some fear that rates fixed by the state commissions would be lower than those fixed by the Interstate Commerce Commission, and would, therefore, discriminate against interstate commerce.

There had been some reason for this because of the facts in the so-called Shreveport Case.[3] The complaint in that case was that the railroads made rates out of Dallas and other Texas points into eastern Texas which were much lower than those which they extended into Texas for like distances and under similar conditions from Shreveport, which is located in Louisiana about forty miles from the Texas border. These lower state rates were maintained under the

[2] Paragraph 4, § 13 of § 416 (P.U.R.1922C, 206).

[3] Houston, E. & W. T. R. Co. *v.* United States (1914) 234 U. S. 342, 58 L. ed. 1341.

authority of the Texas commission, and were granted to competitors of interstate shippers.

The railroads were authorized by the Interstate Commerce Commission to raise the Texas rates to the amount found by the Interstate Commerce Commission to be reasonable for the same distance and under the same conditions for commodities carried in interstate traffic.

The only point to which attention is here directed is that the Texas rates were lower than the interstate rates established by the Federal commission. This is not to say that the Interstate Commerce Commission was wrong or that the rates fixed by it were too high. It may have been entirely justified in its ruling, but the fact remains that its rates were higher than the Texas commission rates. The Supreme Court held that the Interstate Commerce Commission had the right to remove the discriminatory state rates by authorizing them to be increased, and the Federal Transportation Act gives the commission that specific authority.

In an express rate case it was held by the Supreme Court that the Interstate Commission had the power to remove discrimination against interstate express rates by ordering an increase in the state rates where the rates fixed by the Interstate Commerce Commission for the interstate traffic were not shown to be unreasonable.[4]

Here again we find that the state rates were lower than the Federal rates. Again it may be emphasized that this is not to show that the Federal rates were unreasonable, but merely that they were higher than the state rates.

In a Wisconsin case it was held that the Interstate Commission has the power to raise state rates to the level of interstate rates if the existence of lower state rates discriminates against interstate commerce and interferes with the purpose of the Federal Transportation Act to enable railroads to earn a fair return on the aggregate value of railway property used in transportation, and to maintain an adequate national railway system.[5]

This was another case in which the Interstate Commerce Commission raised state rates. It probably was justified in doing so, but nevertheless, the state rates were lower than the Federal rates and would quite likely have remained so if their regulation had been left in the hands of the local authorities.

In an Illinois case the power of the Interstate Commerce Commission to increase state rates in order to remove discrimination against interstate commerce was upheld. This was a controversy over the right of the Federal commission to increase state passenger fares to the level of interstate fares. In this case the fare fixed by state statute was 2 cents a mile. The Interstate Commerce Commission allowed the installation of fares not to exceed 2.4 cents per mile.[6]

In September, 1925, railroads op-

[4] American Express Co. *v.* State ex rel. Caldwell, 244 U. S. 617, 61 L. ed. 1352, P.U.R. 1917F, 45.

[5] Wisconsin R. Commission *v.* Chicago, B. & Q. R. Co. 257 U. S. 563, 66 L. ed. 371, P.U.R.1922C, 200.

[6] Illinois C. R Co. *v.* Public Utilities Commission, 245 U. S. 493, 62 L. ed. 425, P.U.R. 1918C, 279.

erating in the northern part of Minnesota, acting under an order of the Interstate Commerce Commission, increased class rates between points in the state of Minnesota approximately 40 per cent over the state rates within a certain area.[7]

In a Pennsylvania case the state commission ordered a rebate by way of reparation of charges collected for the shipment of coal to the extent the commission held the rate to have been excessive. The charges were made during the six months following the termination of Federal control over railroads. Under the Federal Transportation Act rates could not be reduced unless the reduction were approved by the Interstate Commerce Commission, and that commission had approved no such reduction. Therefore, the order of the Pennsylvania commission was held to be void.[8]

It will be observed that in all of these cases the rates fixed by the state authorities were lower than those fixed by the Federal authorities. In all of them the state authorities may have been wrong. That is not the point. What is being illustrated is that the further removed public officials are from local ratepayers the less liable they are to be influenced by their point of view. Perhaps it could be put in this way:

The further removed they are, the better assurance there is that they will deal justly as between the ratepayers and the company. However that may be, these cases tend to show that those who are looking for Federal regulation merely as a panacea for rates lower than those established by state commissions have nothing in the decisions on which to pin their hope.

Nor is there much to encourage those who ask for Federal control in order to secure lower rates, in view of what happened while the railroads and telephones were in the hands of the Federal government. Rates were not lowered under Federal administration. They were very promptly increased. Whether the Federal government was justified in making those increases is not the question. The point is that they were increased and it may be added if rate increases had been made on the same scale and with the same promptness by state commissions, state commission regulation would have at once been branded as a failure without any regard whatsoever to the justice of the increased rates. There would have been a "widespread dissatisfaction" with state commission regulation to use the sweeping language of the critics.

[7] State ex rel. R. & Warehouse Commission *v.* Northern P. R. Co. (1926) 168 Minn. 393, P.U.R.1927B, 82.

[8] New York C. R. Co. *v.* New York & P. Co. 271 U. S. 124, 70 L. ed. 865, P.U.R. 1926D, 472.

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IN 1919 the Wisconsin commission denied the petition of a telephone company asking for the approval of the order of the Postmaster General in 1918 fixing charges for toll service for intrastate business in the absence of any evidence attacking the reasonableness, fairness, justice, or nondiscriminatory character of existing rates.[9]

The commission said that the effect of the proposed order was to revolutionize the toll rate system for state telephone business in Wisconsin and except for some very short-distance telephone service, tremendously to increase the charges in Wisconsin for toll service. The commission said there was no evidence that the rates were necessary as a war measure.

The Oklahoma commission was pretty emphatic in its denial of the right of the Federal government to interfere with state telephone rates. The commission did not like the order of the Postmaster General increasing rates. The commission said:

> "As a matter of common sense, everybody knows that there is no military necessity for tampering with intrastate telephone rates in Oklahoma by the Federal government. This state had its lesson in long-distance government during territorial days; and now, when all pretext for interference from without in matters reserved to the governing bodies of this state has been dispersed, by the winning of the war, we see no reason for longer submitting to the usurpation of powers properly reserved to the states." [10]

[9] *Re* Wisconsin Teleph. Co. P.U.R.1919B, 640.

[10] State ex rel. Freeling *v.* Southwestern Bell Teleph. Co P.U.R.1919C, 255.

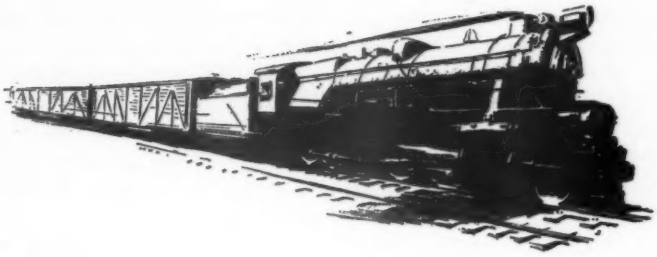
PERHAPS the Oklahoma commission would not have been so emphatic in its opposition to Federal control if the Postmaster General had ordered a reduction in the state telephone rates rather than an increase. The state commissioners, as a body, strongly opposed to the extension of Federal control over rates for electric service, would not have much hope of success in resting their case on the abstract doctrine of state rights, if, as the result of Federal control, a reduction in rates were sure to follow. The maintenance of state rights at the expense of higher state rates fixed by the state commissions would not appeal very strongly to the public. State commissioners would be laughed out of court if state rates were as a usual thing higher than Federal rates.

FROM an examination of the cases and the history of what happened during Federal control of railroads and telephones there would seem to be very little ground for expecting that the Federal government or Federal commissions will do more to protect the people against excessive rates for electric power than the state governments or state commissions. There is much more reason for fearing, as the state commissioners evidently do, that rates would be higher under Federal than under state control, if experience is any criterion.

If reduction in rates is the one proof of effective regulation, these facts may be worth considering.

A Solo Flight into the Realms of State Regulation

INTERESTING *and novel features of Oregon's experiment with a one-man commission, as told by a journalist whose newspaper is an adherent of the present régime, in the coming issue of this magazine.*



"Prudent Investment" *versus* "Reproduction Cost"

Will the two schools of valuation again change sides?

By HENRY E. RIGGS
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DURING the past thirty years there has grown up in the United States a rather sizable industry which has come to be known as valuation, which has furnished employment to several thousand engineers and accountants, and which has cost the utilities and the public up into the hundreds of millions of dollars.

The subject has never commanded much public interest and has been given practically no space in the non-technical press, excepting in connection with occasional rate cases of local interest. There is considerable literature dealing with the subject of valuation, in the form of books and numerous articles in the technical press, and papers in society proceedings. All of this is highly technical, much of it in the nature of propaganda written solely from a partisan standpoint, and while there has been much serious and intelligent discussion of the subject, nevertheless a great deal of the literature of the subject is worthless and confusing.

The average citizen, if he thinks of it at all, is apt to wonder why valuation work is necessary, and what if any good end has been served by the great amount of costly and greatly detailed work that has been done in this field.

DURING the years when the various state valuations of railroads were made, from 1900 to 1910, few if any corporate managers were able to state how much money had been invested in the properties in their charge. There were practically no complete and adequate inventories of property or well analyzed records of actual cost. There was no uniformity of accounting methods. There had been no regulation of public utility accounting, with the result that property accounts on the books of the

companies rarely reflected the true facts. There had been in many cases complete failure to recognize retirements. There were many cases of properties largely built up through charges to operating expense. There was a general failure to differentiate between capital accounts and operating expense accounts and there were undoubtedly numerous cases of careless or dishonest bookkeeping.

The oft-quoted Supreme Court decision in Smyth *versus* Ames, a railroad rate case decided in 1898, held that rates to be adequate must give a fair return on the fair value of the property used in service, thus establishing the necessity for determining proper values in connection with consideration of rates. In the hearings connected with this case it was urged by William J. Bryan, counsel for the state, that the then cost of construction of the property was a truer measure of value than actual cost in the period of high prices following the Civil War, and in enunciating its so-called rule the Supreme Court mentioned, among other factors, original cost and cost at the time of the inquiry.

PREVIOUS to the deciding of this case in 1898 there had been a very limited amount of valuation work in the United States. A few waterworks valuations had been made in connection with the purchase of plants by municipalities on the expiration of the franchise. A few estimates of the value of railroad properties had been made under the provisions of the Texas stock and bond law, but none of these were comparable with present-day valuation. They were either engineering estimates or accounting studies. There was no uniformity of method in these early valuations and in no respect did they resemble the carefully developed and greatly detailed appraisals of the present day. Nothing in technical literature published prior to 1900 is to be found dealing with the subject of valuation.

IN the year 1900 the Michigan railroad appraisal was commenced. This was the first of the formal valuations. The methods developed in that work of preparing the inventory, of developing unit prices applicable to all properties, the use of so-called overhead charges covering engineering, interest during construction, and other undistributable elements of construction cost, constitutes the precedent for all of the subsequent state valuations.

The books of the different railroad companies in the state were in such condition that they could not be used in determining actual investment, or cost of then existing property units and it became necessary to establish some reasonably definite and reliable measure or yardstick of value which could be applied alike to all of the railroads in the state. The conclusion was reached that if an accurate inventory of all property owned and used was made, and an engineering estimate prepared of what it would cost to build that property or one exactly like it, the resulting figure might be accepted as the rational measure of value. The term "cost of reproduction" was officially used in the Michigan appraisal for the first time. In discussion of a number of previous cases this expression had

been used along with numerous others to convey the same idea but it was officially used for the first time on this occasion.

THIS appraisal was made for the purpose of furnishing information to the legislature on which to base a revision of the tax laws. There were in Michigan at that time some ninety railroad corporations, most of them short lines, some of which were old logging roads, and many of these short-line carriers were unprofitable and in a badly run down and dilapidated condition. It was obvious that grave injustice would be done if the report included only an estimate of what it would cost to build a similar new property. Therefore, depreciation became a factor in valuation. On the inspection of the properties the attempt was made to state the condition of the existing property as well as the cost of reproduction of a hypothetical new property.

This was the first time that depreciation appeared as an element to be considered in valuation. The prior Texas valuation made no deduction for depreciation on the assumption that the properties were being maintained in safe and efficient operating condition through charges to operating expense.

This early Michigan valuation is referred to at some length for the reason that it established many precedents which were closely followed in the subsequent state valuations and which formed the basis upon which the Bureau of Valuation of the Interstate Commerce Commission built its rules for the Federal valuation.

IT must be remembered that the theories and methods in all of the state valuations were developed in a very short period of time, and the amounts of money available for these undertakings were so limited that it was impossible to make any exhaustive studies of statistics or to call in railroad officials and engineers other than those on the staff for conference.

In Michigan 10,000 miles of railroad were appraised in a period of six months at a cost of about $70,000 or $7 per mile. In Minnesota approximately the same mileage was appraised at about the same cost per mile but work extended over a considerably longer period. The Wisconsin appraisal is said to have been done at less cost than that in either of the other states. It is small wonder, therefore, that, with the limited funds available and the pressure that was brought on the appraisers to submit results in the shortest possible time, a good many theories were adopted which were not given sufficient con-

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sideration and which should be modified or abandoned as unsound.

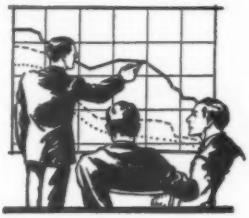
THE Federal valuation of railroads is the largest task of the kind ever undertaken. This work has extended over a period of eighteen years. It has been carefully done and it is in the most complete detail. In connection with the work of the valuation the railroads have been compelled to make the most exhaustive study of their properties that has ever been made and as a result railroad records at the present time are very complete and very accurate. There can be little or no question as to the general accuracy of the inventories prepared by the bureau and practically all of the differences between the government and the railroad, certainly all of the major differences, are differences of theory rather than of fact. Whether the theories of the commission are finally sustained by the courts or not, the cost of the Federal valuation has been fully justified. It forms a basic valuation which can be adjusted to the price level of any subsequent year and consequently gives the commission a definite starting point for all of the annual valuations that will have to be made in connection with the recapture of excess earnings.

It is worth all it cost if for no other reason than that it has for all time laid the bugaboo of "watered stocks." While the final valuations have not all been reported the work has gone far enough to indicate that the total valuation of railroad properties will amount to twenty-five or twenty-six billions of dollars under the commission's theories. In 1929 the total property investment accounts of the Class I railways of the United States including their investment in road and equipment, cash, and materials and supplies amounted to $25,465,000,000.

The final figures of the Bureau of Valuation thus fully sustain the book figures of the companies.

IT is of further interest to note that the total amount of railway securities, stocks, and funded debt outstanding in the hands of the public on December 31, 1929, totaled $18,769,700,000 of which more than $7,212,500,000 was represented by capital stock and more than $11,467,100,000 was represented by funded debt. These figures make it very clear that value, even on the ultra conservative basis adopted by the commission, is far in excess of the total par of stocks and bonds held by the investing public.

THE deplorable conditions and intolerable evils which prevailed in the 1870's and the 1880's which resulted in the passage of the Interstate Commerce Act, which conditions continued to some extent for the next decade, have all been done away with. The activities of the Interstate Commerce Commission, particularly the adoption of the uniform classification of accounts and statistics, have entirely eliminated the evil of excessive securities along with other bad practices that formed such a just cause of complaint. It has taken the Federal valuation, however, to prove this fact to the people of the United States and consequently any discussion of the Interstate Commerce Commission's railroad valuation should



Will the Current Era of Falling Prices Cause a Shift in Positions on Valuation Theories?

"THE developments of the past twelve months seem to indicate that there may be another realignment and that we may expect to find the representatives of the public once again contending strongly for cost of reproduction and praising the steadfastness of the Supreme Court."

give special emphasis to this point.

REFERENCE has been made to the fact that the principal differences between the commission and the carriers involve questions of theory. During the years in which the state valuations were in progress very serious differences of opinion developed in the engineering and accounting professions as to theories of reproduction and depreciation, and as to what intangible elements should be included in valuation. During these years a great many papers and some books were written which clearly indicate that there was, particularly in the years 1912 and 1913 when the Federal valuation was commenced, a vast amount of confusion on the subject and a very radical disagreement between men engaged in the work. As has been pointed out, the commission closely followed precedents which were established in the state valuations and the theories developed at the commencement of the Federal valuation have been adhered to throughout the entire work. Present differences of opinion are largely due to the following of precedent and the adoption of theories which were used in the state valuations without adequate consideration, some of which were wrong.

These major differences of engineering definition and theory now have reached the point where they have become questions of law that have not yet been decided. The Supreme Court has definitely settled the controversy as to whether cost of reproduction or actual cost or "prudent investment" is entitled to major weight by holding that cost of reproduction must be considered and given the weight to which it is entitled.

THE complex subject of depreciation is undoubtedly the major unsettled question at this time, and

there are a few other issues, such as going concern value, upon which more light will have to be shed by opinions of the courts before there can be much uniformity of valuation practice. These unsettled issues cannot be discussed in this article but it does seem desirable to very briefly consider cost of reproduction.

WHEN the state valuations were made cost of reproduction was adopted as the measure of value, principally because it was the one available method that permitted all railroad companies to be compared by the same standard. The fact that it gave a figure somewhat less than the actual cost of many properties was not the controlling reason for its adoption, although it was recognized and urged by counsel in the various cases. It is undoubtedly the fact that in the earlier case of Smyth *versus* Ames, the fact that cost of reproduction gave a less figure than cost was given special weight in the agreement. The point which is here emphasized is the fact that cost of reproduction as a measure of value was first developed by the representatives of the public in connection with various rate cases between the years 1894 and 1912, and also that cost of reproduction was specifically ordered to be found when the Valuation Act was framed by Congress.

THE sharp increase in prices, or the fall in the value of the dollar between 1915 and 1920 had a marked effect on operating expenses of all utilities and caused many companies to seek relief. This resulted in many rate cases reaching the courts. These cases emphasized the increasing difference between cost of reproduction and actual cost.

In the year 1920 an estimate of cost of reproduction gave a figure not far from 100 per cent in excess of actual cost in the case of properties built prior to 1915. During the period between 1912 and 1920 the corporations urged cost of reproduction, while many of the representatives of the public urged original cost, or a newly developed yardstick known as "prudent investment."

Thus, the two parties to the controversy as to valuation changed sides.

Those who had originally urged cost of reproduction because it gave the low figure now contended that such a figure was now excessive and should not be used.

FOR more than thirty years the United States Supreme Court has been perfectly consistent in the matter of valuation. It has held that the thing to be found is the value of the property at the time of the investigation. It has held that each case must be decided on its own set of facts and that in the determination of value proper weight must be given to each element of value. It has held that, among other things, the original cost and the cost of reproduction at the time of the investigation, must be considered and given such weight as was proper. It has recognized the undoubted fact that values change and no matter how desirable a stable value may be, stability of value cannot be secured by formula, by legislative enactment, or by commission order. When values increase the owner is entitled to the increase. When values decrease the owner must stand the loss.

In recent years it has been made very clear in numerous decisions that consideration must be given to cost of reproduction, and when present prices are not taken into account and given weight, it is error and the valuation cannot be sustained.

A CAREFUL analysis of the statistics of operating expenses of railroads and utilities over the 20-year period, 1910 to 1930, will clearly disclose the fact that the change in the purchasing power of the dollar has a very marked effect on the cost of maintenance, either per unit of property or in terms of per cent of the actual investment. Unless value is stated in terms of the purchasing power of money in the particular year in which the validity of the rate structure is being questioned very unfair results are secured.

As an illustration of this, one of the large railroad companies which had been spending approximately 12.6 per cent of its investment in maintenance of locomotives for a number of years prior to 1915, found that this percentage of locomotive maintenance to investment increased to 32 per cent in 1920 and that the average percentage expended between 1916 and 1926 was 23.1 per cent. When this actual investment is restated in terms of cost of reproduction as of each year the 1920 expenditure amounted to 16.6 per cent while the average 1916 to 1926 was 13.8 per cent.

Similar figures will be derived by an analysis of the expenditures for maintenance of any class of equipment, or maintenance of way and structures on any Class I carrier. Unless value and revenue are based on the same dollar that must be paid out for operating expenses there is confiscation.

COST of reproduction, when properly made, should be equivalent to the statement of the value of the investment in terms of the purchasing power of the year in question. Revenues earned by the company are paid by the public in the money of that year and all operating expenses are paid out in the money of that year. If justice is to be done, value must be stated in terms of the same purchasing power. The more fully statistics are studied over a long enough period to get the full effect of price changes in recent years, the more certain it becomes that the consistent position of the Supreme Court is sound and right. The court held that consideration must be given to present costs in 1898. In 1909 and again in 1912 the same doctrine was reiterated. In

¶ "IN *the year 1920 an estimate of cost of reproduction gave a figure not far from 100 per cent in excess of actual cost in the case of properties built prior to 1915. During the period between 1912 and 1920 the corporations urged cost of reproduction, while many of the representatives of the public urged original cost, or a newly developed yardstick known as 'prudent investment.' Thus, the two parties to the controversy as to valuation changed sides.*"

many cases since 1921 it has been made clear that prices of the date of valuation must be considered.

DURING the past few months the decline in the commodity prices has had a marked effect on cost of reproduction, and it is quite evident that if labor costs follow commodity costs (as they invariably have in all periods of price change during the last 100 years) the cost of reproduction yardstick will measure a very marked decrease in property values, bringing them down to a level very much below that which has prevailed between 1923 and 1930.

It is interesting to note that, especially during 1931, some of the most vociferous advocates of prudent investment and the stabilized dollar are contending that new values ought to be made on the basis of 1931 cost of reproduction in order to insure stabilization at a proper figure.

The developments of the past twelve months seem to indicate that there may be another realignment and that we may expect to find the representatives of the public once again contending strongly for cost of reproduction and praising the steadfastness of the Supreme Court.

THE recent changes in the price levels indicate that another very interesting question will shortly have to be answered. In the recapture proceedings which are now in progress under the provisions of the Transportation Act, value must be fixed for each recapture year commencing with 1920. Particularly for the years 1923 to 1927 or 1928, years of good earnings on many of the carriers, recapture will be in very considerable amount if the valuations of the commission are sustained.

These valuations are being arrived at by trending the initial valuation to the terms of the purchasing power of the different recapture years using trends that have been developed by the commission. The amounts to be paid to the government are determined on the basis of the earnings and operating expenses and valuation of each particular year. These proceedings have been delayed by the noncompletion of the Federal valuation, and hearings now in progress deal with the years 1920 to 1927, from four to eleven years ago.

IF recapture due in these years in which the dollar had a small purchasing power, is to be paid in the dollars of 1931 or of a like purchasing power, is not the carrier just as heavily penalized as if the 1914 price had prevailed in the valuation?

The Right of a Utility Employee to Strike

IN these days of economic readjustments, the attitude of labor, of the lawmakers, of the courts, of the utility industry, and of the public toward strikes and lockouts on enterprises "charged with public interest" become matters of increasing importance. Beginning in the next number of this magazine, LYLE W. COOPER *will set forth these labor problems in a series of two articles, and will indicate the possible solutions of them.*

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

THOMAS F. WOODLOCK
Economist and author.

"We are commencing to find out by uncomfortable experience that what is bad ethics is also bad economics."

JACK SHUTTLEWORTH
Editor of "Judge."

"No American railway official can understand why Japan is willing to fight to get hold of a railroad."

ALLAN A. SMITH
General attorney of a power company.

"There has been discrimination against public utilities of all classes in the levy of taxes."

ALBERT C. RITCHIE
Governor of Maryland.

"Let us keep clearly in mind that government control and ownership is in the last analysis a species of communism."

DANIEL WILLARD
President, Baltimore and Ohio Railroad.

"I don't know one case of a railroad officered by men who have reached their positions by influence or by hobnobbing with financiers."

JOHN T. FLYNN
Economist and author.

"Our banking superintendents, our utility commissions, and our Interstate Commerce Commission have learned that the holding company can make regulation impossible."

CARL D. JACKSON
General counsel, National Electric Light Association.

"You will look in vain for any provision of the Constitution of the United States even remotely suggesting authority in the United States government to engage in business."

JOHN T. FLYNN
Economist and author.

"We have heard a vast amount of hokum about wide distribution of utility shares to the public, though no one has done less than the utilities to distribute ownership of shares that really count."

E. W. HOWE
Editor and writer.

"All I pretend to know is that we are not doing as well as we might, and that the remedy is not mere radicalism, rioting, quarreling, conventions, commissions, parades, and congresses."

HIRAM BINGHAM
U. S. Senator from Connecticut.

"We are gradually becoming subjects of a great and powerful government which exercises its power through despotic commissions and bureaus whose efforts are constantly making us less independent."

BEN B. BOYNTON
General counsel, Illinois Telephone Association.

"Some utilities by their attitude have invited the extension of the principle of regulation into fields of purely corporate management. They tempt a kick at the very base upon which proper utility regulation rests."

F. A. OGDEN
Steel official (referring to the proposed increase in freight rates).

"To further penalize industries in order to benefit the railroads is not to improve the situation in the slightest, but only to divert more and more business away from the railroads to the bus transportation companies, and other forms of carriers."

HENRY C. ATTWILL
Chairman, Department of Public Utilities of Massachusetts.

"Regulation which is dependent upon protracted and costly hearings and investigations, and which results in the public being required to pay much more than is necessary to attract the capital needed to furnish the service, cannot hope to long survive."

HUSTON THOMPSON
Lawyer, Washington, D. C.

"I know that the information which has been coming out of the Federal Trade Commission is the thing which is centering the searchlight on the power industry today. If we had not had this information from the Federal Trade Commission the public would not be so aroused."

OTTO KAHN
Wall Street banker.

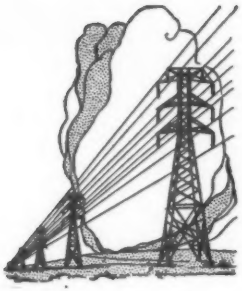
"There are elements inherent in the very essence of government, which emphasize the need in a democracy of confining the business functions of government to those activities which private enterprise is not qualified to undertake, or which, in their nature, it ought not to be permitted to undertake."

FRED W. SARGENT
President, the Chicago and North Western Railway.

"When the government, with its unlimited powers and resources, enters private business to compete with its own citizens, thereby destroying the value of the property of the citizens with which it competes, it is taking private property without compensation just as if it had confiscated it to the public interest."

HENRY SWIFT IVES
New York lawyer.

"If the railroads, public utilities, insurance companies, the food handling and distribution business, and the oil, coal, and lumber industries are taken over by the government, the Socialists and Communists, together with their pseudo-liberal and sham progressive allies, well know that it will be only institutions."



What State Lawmakers Have Done for and to Regulation in 1931

PART II

Significant trends in legislation which have both extended and curtailed the powers of the state regulatory commissions during the past twelve months.

BY GEORGE E. DOYING

THE Oregon Public Service Commission was abolished and in its stead was created the office of Public Utilities Commissioner of Oregon. This was a part of the program advanced by Governor Julius L. Meier, whose other recommendations also met with approval at the hands of the legislature. In Oregon, at least, the "mandate" of the people did not stop with the governor.

The Oregon legislation has been discussed at some length in PUBLIC UTILITIES FORTNIGHTLY in a series of articles [1] by the Honorable Oswald West, former governor of Oregon and former chairman of the old railroad commission. Nevertheless, to make this record as complete as possible, a brief *résumé* of the new laws is here presented:

The official designation of the person constituting the nation's only one-man commission is Commissioner of Public Utilities of Oregon; his salary shall be fixed by the governor at a sum not exceeding $7,500 a year. He is to be appointed by the governor (Charles M. Thomas is the first incumbent) and may be removed by the chief executive "for any cause deemed by him sufficient." While the governor is required to notify the commissioner of the charges against him and permit him to be heard in his own defense, the power of removal is absolute, "and there shall be no right of

[1] Issues of April 30, June 25, July 23, 1931.

review of the same in any court whatsoever." This latter provision is carried over from the old law, but previously a commissioner could be removed only for inefficiency, neglect of duty, or malfeasance in office.

THE commissioner is specifically charged with the duty of representing the patrons of any public utility and the public generally in all controversies respecting rates, charges, valuations, services, and all matters of which he has jurisdiction. As was true with the former commission, the new commissioner is authorized to institute investigations on his own motion and when satisfied that sufficient grounds exist to warrant a hearing he shall notify the utility and give ten days' notice of the hearing, thereafter proceeding as though complaint had been filed. To this reënactment of the old law, however, there has been added the following unusual *proviso:*

> "That the commissioner may in his discretion, after he has made any such investigation on his own motion, but without notice or hearing as above specified, make such findings and orders as he deems justified or required by the results of any such investigation, which findings and orders shall have the same legal force and effect as any other finding or order of the commissioner."

A section providing for the keeping of a record of all investigations, testimony, and other matters and certifying the same to the court when required, precludes the making of a record when the commissioner chooses to act without notice, by having tacked onto the end: "Provided, however, that the foregoing provision shall apply only to hearings upon notice to the utility and/or to other interested parties."

The commissioner in this instance seems truly to have been made judge, jury, and prosecutor, with defense counsel barred from the trial room.

Every city and town in Oregon is authorized to fix by contract, ordinance, or otherwise, for periods not exceeding five years, the rates of any public utility within the municipality, but the commissioner of public utilities is permitted to rule within ninety days that the action is not in the public interest, in which event the matter goes to a vote of the electors concerned.

The amended act also undertakes to confer upon the commissioner jurisdiction over all contracts between public utilities, including those with holding companies for services. Failure or refusal of either party to such a contract to give the commissioner free access to all books and records is declared to be *prima facie* evidence that the contract is unfair and contrary to public interest.

THE Oregon legislature also created a hydroelectric commission, composed of the state engineer and two members appointed by the governor and vested with jurisdiction over the use and development of water power resources of the state for the generation of electricity. The legislation, according to Governor Meier, is patterned after the Federal Water Power Act and the Power Act of British Columbia.

What this commission is designed to accomplish is set forth by Governor Meier as follows:[2]

> "Briefly stated, the commission is vested with power to issue licenses, for a period not to exceed fifty years, for the development and construction of water power

[2] *United States Daily*, March 25, 1931.

projects, and provision is made for the set-up of amortization reserves for the payment or reimbursement of the invested capital so that during or at the expiration of the license the invested capital can be repaid or reimbursed.

"Preference is given the application of municipalities, and the municipality is given the right to take over any project upon the payment of an amount not exceeding the actual investment at the time of its acquirement.

"The legislation contemplates and looks forward to the time when, out of earnings, the capital invested in any project constructed under the act shall be amortized and repaid and the project become the property of the state, free from all outstanding rights and obligations.

"Without proceeding further into detail, it may be stated that under the legislation the water power resources of the state developed by private capital remain for all time the property of the state; municipal and public development is encouraged and given preference, while on the other hand private capital invested in any project is safeguarded and assured fair and businesslike treatment until the project in which it is invested may be taken over by the state or municipality.

"Under the legislation the state receives a reasonable compensation for the waters used in the generation of electricity, and the rates paid by the consumer will be based upon a fair return on the actual legitimate investment, provision being made that the hydroelectric commission shall have absolute supervision of the construction cost and financing of all projects for which it issues permits.

"By providing that a project shall revert to the state at the expiration of the license, the act challenges Federal jurisdiction over state waters, it being the contention of the administration in this legislation that the state exercises absolute jurisdiction over the waters within its boundaries."

A third piece of utility legislation enacted in Oregon provides for the creation of people's utility districts and includes the unusual provision that all property owned or controlled by such districts shall be assessed and taxed the same as privately owned utility property.

Governor C. Ben Ross of Idaho also suggested to the state legislature the advisability of creating a one-man commission in place of the existing three-member board, with a material increase in salary. "There is a growing dissatisfaction," he said in his message to the legislature, "with the results obtained in the operation of the public utilities under our present public utilities commission."

The legislature, however, did not view this suggestion with favor.

At a special session of the Texas legislature, called to act upon conservation measures, Governor Sterling urged the creation of a new commission to administer the conservation laws, thus displacing the railroad commission in that field. Charges had been made that the railroad commission was lax and inefficient in its handling of the oil situation. The legislature, however, declined to accept this view, but passed a new oil and gas conservation law and a new pipe line law and left their administration in the hands of the railroad commission. The regular

¶ "The *Idaho legislature was the first to adopt a new rule in the popular game of taxing public utilities, and it was closely followed by the legislature of South Carolina. Each of these states enacted a law levying a tax of one-half mill per kilowatt hour on all electric power generated or sold within the state.*"

session in Texas also failed to accept the governor's recommendation for the creation of a public utilities commission.

IN West Virginia bills were introduced to abolish regulation of public utilities, to end the terms of the present commissioners on March 1, 1933, and elect by popular vote in 1932 a new commission, and to increase the powers of and appropriation for the public service commission. The abolition bill did not even reach the floor of either house; the "ripper" proposition was rejected in the house by more than two to one; while the house passed the bill indicating confidence in the administration of the regulatory law by the existing commission. This measure, however, failed of passage in the senate.

THE Idaho legislature was the first to adopt a new rule in the popular game of taxing public utilities, and it was closely followed by the legislature of South Carolina. Each of these states enacted a law levying a tax of one-half mill per kilowatt hour on all electric power generated or sold within the state. In each state much of the hydroelectric power developed is transmitted across state lines, and a temporary injunction has been issued by a Federal district court against each of the laws, upon petitions of certain power companies. In the South Carolina case a three-judge statutory court has heard arguments and received briefs on the question of making the injunction permanent, but at this writing no decision has been rendered. In Idaho the attorney general has issued an opinion holding that the tax is applicable to power generated by a municipally owned plant.

IN Texas a law was enacted to levy a tax of 2 per cent upon natural gas produced and saved within the state and on gas imported. Iowa levied a tax of approximately $12 a mile on pipe lines, in addition to the physical property tax.

The Florida legislature imposed a tax of $1.50 upon each $100 of gross receipts of "all corporations, firms, and individuals, including municipalities, receiving payment for light, heat, or power and for natural or manufactured gas for light, heat, or power and for use of telephones and for the sending of telegrams and telegraph messages." The tax is effective from July 1, 1931.

New Hampshire enacted a law for the taxation of electric and gas utilities upon the actual value of their franchises, property, and estate "at a rate as nearly equal as may be to the average rate of taxation at that time upon other property throughout the state."

ILLINOIS amended its law permitting cities to adopt the commission form of government and provided that neither the mayor nor any commissioner shall be an official of any public service corporation at the time he assumes office.

A bill proposing to bar any public utility official from holding or being a candidate for public office was introduced in the Massachusetts senate but was withdrawn.

MAINE enacted a law "to provide adequate rural electric service at just and reasonable rates through-

The Extraordinary Power Granted to One Commissioner

"A section providing for the keeping of a record of all investigations, testimony, and other matters and certifying the same to the court when required, precludes the making of a record when the commissioner chooses to act without notice, by having tacked onto the end: 'Provided, however, that the foregoing provision shall apply only to hearings upon notice to the utility and/or to other interested parties.' The commissioner in this instance seems truly to have been made judge, jury, and prosecutor, with defense counsel barred from the room."

out the state of Maine." The act provides that:

> "Whenever any electric light and power company does not supply reasonably adequate service in any portion of the territory in which it is authorized to furnish service, then any three or more persons not receiving and unable to receive service in the said territory at reasonable rates may themselves form a corporation for the transmission, use, and sale of electricity in such portion of said territory as may be designated by the public utilities commission, and the electric light and power company authorized to furnish service throughout all such territory shall furnish the newly organized corporation with electric current sufficient for their needs at reasonable rates to be prescribed by said public utilities commission. Said current to be furnished from the transmission lines of the said public utility most conveniently located for the purposes of the new corporation."

At least one application under the terms of this act has already been filed with the commission.

The Maine legislature also classified heating companies as public utilities, and amended the grade crossing law to provide for the assessment against the state of 40 per cent of the expense of elimination or alteration of a crossing, 10 per cent to the town, and 50 per cent to the railroad. The law previously levied 25 per cent upon the state, 10 per cent upon the town, and the balance upon the railroad.

Laws were enacted giving to the Kansas Public Service Commission and the North Carolina Corporation Commission power to pass upon contracts between public utilities and holding companies. A bill of this character was defeated in Maine.

The Nebraska Railway Commission was again given jurisdiction over public grain warehouses, which, since August 2, 1931, are required to secure permits from the commission. The jurisdiction of the public service commission of New York was extended to cover motor bus lines and privately owned water companies.

The Alabama legislature extended the jurisdiction of the public service commission to include security issues of telephone companies. The Alabama senate killed a bill which proposed to extend the terms of office

of the commissioners from four to six years and to increase their powers.

THE California legislature passed a bill sponsored by the railroad commission, and approved by shippers and carriers, to clarify existing provisions of the law relative to the jurisdiction of the commission to award reparation. Although the commission had continuously taken jurisdiction to award reparation where carriers made charges in excess of their filed and published rates or in violation of the long and short-haul clause, there was some doubt as to its power to do so because of the uncertain language of the act, which provided that jurisdiction to award reparation was for "an unreasonable, excessive, or discriminatory" charge by a utility. The amendment makes it clear that such words include violations of other various provisions of the act.

THE Massachusetts Department of Public Utilities was directed by an act of the legislature to approve the design and types of devices to be used to retard or prevent the escape of gas in case of fire, and to adopt rules for their installation and operation.

NEBRASKA enacted a law to provide for the creation of irrigation districts and permitting them to operate electric plants. New Mexico authorized municipalities to construct and operate public utilities, and provided that on petition an election shall be held on the granting of a franchise to a public utility. Iowa authorized municipalities to pledge the earnings of a municipal plant to pay the purchase price of a plant, and enacted another law placing the securities of public utility corporations under the Blue Sky Act.

The Alabama legislature by joint resolution created a committee to investigate the valuation of electric utilities, their charges, rules, and other matters.

NEARLY half the states made some changes in the laws relating to motor carriers.

South Carolina provided for the creation of a commission, composed of two members of the railroad commission, two members of the highway commission, and one member of the tax commission, to make a thorough investigation of motor transportation of freight and passengers.

Maryland undertook to classify taxicabs as common carriers and place them under the jurisdiction of the public service commission. This law, however, has been made the subject of a referendum petition and cannot become effective unless it is approved by the people at an election in November, 1932. Numerous restrictions as to weight, length, and height of vehicles were made, and in several instances the rate or method of taxation was changed.

Alabama, California, Connecticut, Florida, Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, North Carolina, Pennsylvania, Tennessee, Texas, Wisconsin, and Wyoming were among the states which acted upon the motor carrier question.

THE net result of the legislative sessions, covering all but four of the states of the Union, impels one to

the belief that the people are not greatly excited over the "power trust" bogey; that in at least most of those states where public utilities were something of an issue at last November's elections there must also have been other important factors entering into the elections, and that these factors really had much more to do with the results than any fear of the utilities.

The fact that, aside from Oregon, no state made material changes in the public service commission laws other than to strengthen them speaks well for the efficiency with which the state regulatory commissions have administered the statutes, and should serve as a decisive answer to those who have loudly acclaimed that utility commission regulation is a failure.

The commissions generally are functioning adequately and appear to have—and to merit—the confidence of the lawmakers elected by the people.

Interesting Items about the Carriers

THE popular London busses, (5,000 of 'em) with uncovered top decks, are at last to be roofed over.

* *

THE Long Island Railroad in New York carries more passengers than any other railroad in the world.

* *

AN experimental sleeping car is being built of aluminum; it will be a third lighter in weight than a steel car.

* *

ALASKA leads the world in facilities for air transportation; it has one landing field for every 908 inhabitants.

* *

BUS riders in London may entertain themselves during halts in traffic by playing chess and checkers—if present plans are carried out for installing boards.

* *

UPON the purchase of five adult passenger tickets, the traveler in New England can obtain railroad transportation for two persons—and for his motor car.

* *

To stimulate shopping during the usually quiet morning hours, street car and bus companies in some cities are now offering free rides between 9 A.M. and 11 A.M. on bargain days.

* *

RAILROADS have changed the American diet and improved public health by means of refrigeration cars, which permit the transportation of fresh vegetables that contain valuable vitamines.

* *

THE fastest start-to-stop train schedule is now maintained by the *"Cheltenham Flier,"* of the Great Western railroad in England, which now runs 77¼ miles from Swindon to Paddington in sixty-seven minutes, or 69.18 miles an hour.

Why I Believe in Private Ownership—Unless

ARTICLE II. *The personal experience of a liberal who became converted into a conservative.*

By AARON HARDY ULM

"SOMETHING is wrong with the heart of a man who at twenty-five is not a radical, and with his head if at forty he is not a conservative."

So observed Lord Roseberry. I like to think that my own changes of views while traveling the sombre road from twenty-five to forty tend to support the asservation of the noble lord.

One of the changes in my case was an about-face as to what we call government ownership.

REARED in an atmosphere of Populism, I was for a long time an earnest believer of the doctrine that the general public, functioning *via* government, should own and operate all public service enterprises such as railroads, street railways, gas, and electric power and lighting establishments.

I still adhere to the principal bases of that former belief.

Are not these "natural monopolies" comparable to the postal service and to municipal waterworks? Do not private owners of such establishments often, if not usually, exploit the public in as far as they can? Is it not human for individuals to misuse the great power attaching to private control of such monopolistic essentials? Certainly we can trust ourselves, who in the finality are government, to deal fairly with ourselves.

So ran the argument. In so far as it goes, it is valid argument.

BUT harsh experience has taught me that nothing can be more deceptive than plausible argument nor falser than the cursorily obvious. An entirely too good a case can be made out theoretically for government ownership. Its very persuasiveness makes it suspect.

"One should be most skeptical about inevitable conclusions following

from an incomplete set of facts," a great scientist is once reputed to have said.

It was while helping to look after the most successful public ownership enterprise of which I am familiar in detail that I first became suspicious of insinuating argument in favor of such undertakings. The enterprise was the Western & Atlantic Railway, extending from Atlanta, Georgia, to Chattanooga, Tennessee. The line was built in the 1840's by the state of Georgia. On the whole it has been a successful enterprise. Its construction was at a time when this country wavered somewhat between public and private ownership of the newly evolving railroads. Government had a big hand in the early and mid-parts of that evolution. But the Western & Atlantic is the only road, in this country, that has been owned outright by an entity of government since the early days of railroading.

The duty of looking after the state's valuable railway property is entrusted to the governor's office, of which I was an attaché during a period of about five years. The first governor under whom I served had been at one time an operating official of the railway.

"Get me a copy of an annual report of the operating company," he said to me one day.

Many of the reports had been made to the governor's office—but not a copy of one of them could be found anywhere in the state capitol!

A note to the president of the big railway company that operated the road under lease brought, by return mail, a complete set of all its reports to our office.

SOMETHING like that happened every time there was need by us of the governor's office for information which was not as glaring as a house afire about the state's ten to twenty millions of dollars worth of railroad. I am convinced, by first hand experience, that had it been possible under the circumstances for those in charge of the state's affairs to "loose" such things as rails, ties, roadbed, and locomotives, not a shred of the property would be identifiable as the state's today.

The construction of the road was an historic episode. The state operated the railway about twenty-five years and, during that period, much of the most graphic fighting of the Civil War was along the line of and in much part over possession of the road, of key importance.

DURING my régime as a minor official of the state, railroad valuation proceedings, under the La Follette Resolution of 1914, were begun by the Interstate Commerce Commission. We employed an expert to see that the value put upon the state's railroad should be as large as could be established. Of course, the expert wanted all the data procurable about the road. In the capitol building there were a half dozen vaults crammed full of old records. The expert and I hunted through them all and through all the archives of the state government—and we found almost nothing of account about the details of construction and operation of the road by the state! The expert had to hunt up old citizens and explore their memories in trying to procure what should have been fully

of public record in the state house.

Because of many experiences like the foregoing, I came to the conclusion that I would not entrust the managing of any predominantly commercial undertaking to anybody—not even to myself—in a public office of any kind.

The reason that the railroad of which I treat has fared pretty well may be traced to two factors:

One factor is luck; the gods of chance have smiled on it nearly a hundred years.

The other factor is the fact that for about sixty years past the state has treated the property as a mere capital asset and left the management of it to agencies, holding long-term leases, that have operated it as a wholly private enterprise. Otherwise, the asset would have been dissipated long ago. This may be evidenced by contrast between the status of the state's railroad, privately operated, and the state's treasury, publicly operated.

THE railroad property has been so conserved by operating lessees that for many years it has had a sales value in excess of the state government's indebtedness of every sort. But during most of that time the state's running finances have been awry. During scarcely a single year has the state treasury been able to make prompt distribution regularly of appropriations to public schools. Today, prospective returns from the lease of the state's railroad have been hypothecated several years in the future and the state treasury is wrestling with a huge deficit.

Every lessee of the railroad has been under impelling necessity to keep up the property and operate it efficiently. If it did not, it would have lost money and ultimately the use of the property. Under the leases, returns to the state from the property have been on fixed annual bases. Sheer self-interest caused the present lessee to make it one of the best-equipped and maintained railroads in all the south.

OWNERSHIP of the railroad, shielded as it is from the fitfulness of politics, gives to the state government an unusually fine quality of basic credit. Its credit is thus so well protected that the politicians can ignore budgetary principles. Year after year the legislature has appropriated more money than it dared raise by taxation or otherwise. Hence of late there has existed the singular spectacle of a state government being highly solvent and "broke" at the same time.

The state's fiscal muddle is not owing particularly to the quality of folk who have handled its affairs. Adjudged as a whole, I never knew

¶ "THE *man in the street has just as much right to meddle with the management of an electric lighting plant owned by a government of which he as a citizen is a part as he has to meddle with what a city council does. Either kind of meddling can be virtuous and patriotic and at the same time utterly stupid, as it often is.*"

a more conscientious, industrious, or (for the work they were doing), a more capable lot of people than those with whom I toiled in the Georgia state government. Any one of numerous men in both the legislative and executive branches of the government then and since could have managed the state's railroad successfully—as a private enterprise.

Yet if public operation had been entrusted to anyone or group of them for a considerable period of time, the property, I dare say, would have been wrecked or lost to the state.

This is because no one in a public office, no matter how insulated, can always do those things that are essential to the lasting success of an enterprise that calls for commercial intrepidity, business acumen, and energetic promotion. Nor can one in a public office avoid doing things that are destructive of the success of such an enterprise. He is confronted with conditions such as surrounded a man who had been drafted from industry during the World War to put one of the seized German vessels in shape for transport service and had done the job well and quickly.

"How did you manage it?" he was asked.

"Simply by ignoring a dozen Federal statutes which I was sworn to observe and by otherwise doing things for which I might be sent to prison," he replied.

THE man in charge of a continuing governmental job of commercial sort either "goes political" to a great extent, or runs the risk of being thrown out on his face before he gets going very well at all.

This is not because of human faults and frailties; it is just as much because of human virtues. The man in the street has just as much right to meddle with the management of an electric lighting plant owned by a government of which he as a citizen is a part as he has to meddle with what a city council does. Either kind of meddling can be virtuous and patriotic and at the same time utterly stupid, as it often is.

Government as we know it is an evolution from the remote past. It has been developed for the pursuit primarily of certain elementary objectives that are more or less the same at all times and under all conditions. Principal ones are national defense, the protection of life and property, and the administration of justice. In so far as our kind of government is conducted logically within those primary spheres it is guided by hands reaching out of the past in the form of precedents and rules yielded by human experience through the ages. In other respects, free government is motivated in most part by the emotions of the citizenry which sustains it.

Modern business and industry are relatively new phenomena, wot little of the past, and must have eyes to the future. In the commercial world emotion is ruinous. Practically every successful business is under some kind of hard-boiled dictatorship. Profit must be a prime objective whether or not attained.

THE structure of our kind of government is not adapted to operations for profit in terms of money. If carried on long enough every com-

mercial enterprise operated by government becomes in the end some sort of eleemosynary institution.

The principles, processes, and precepts of our kind of government and those of capitalistic business and industry are antipodal. I am not prepared to say that we are not moving towards a time when there must be an overhauling of the foundations of both government and industry, inclusive of business. But that must be done before government ownership and operation of even public service utilities of predominantly commercial kind can be made lastingly successful.

Pleasing showings can be made for so-called government ownership in special instances and for limited periods of time. But until both the capitalistic system and political democracy or free government are scrapped, every government ownership and operation enterprise will be sapped ultimately by forces beyond control.

These forces are the ones which produce the absurdities of free government even when within its proper sphere. Private enterprise has its grotesque aspects, too. But when you cross them with those of government you get monstrosities.

THE more I have learned about free government, the more I have liked it, and I can not quite say that as to private business and industry. But private business and industry have, and can have, no faults which in my opinion would justify the sacrificing of free government—and that is what would occur if we carried through an attempt to correct the faults of private enterprises by supplanting it with government ownership.

Incidentally, if I favored government ownership I should want it developed first around old industries of kind not subject prospectively to great change. I would keep the deadening and retarding hand of government off new and expanding ones like the utilities as long as possible.

Free government and government operation of commercial enterprises are not compatible.

Edison's Last Public Statement

(The message sent from his laboratory in Florida in May, 1931, to the National Electric Light Association in Atlantic City, New Jersey)

"MY MESSAGE TO YOU IS TO BE COURAGEOUS. I HAVE LIVED A LONG TIME. I HAVE SEEN HISTORY REPEAT ITSELF AGAIN AND AGAIN. I HAVE SEEN MANY DEPRESSIONS IN BUSINESS. ALWAYS AMERICA HAS COME OUT STRONG AND MORE PROSPEROUS. BE AS BRAVE AS YOUR FATHERS WERE BEFORE YOU. HAVE FAITH—GO FORWARD."

—THOMAS A. EDISON

WHAT READERS ASK

Out of the mail bag of the editors have come these questions; because they touch upon subjects of broad interest to those in the public utilities field, they have been selected for publication—together with the answers. What questions do *you* want to ask?

QUESTION

In what states are corporations foreign to the state prohibited from engaging in the utility business?

ANSWER

ARIZONA, California, Illinois, Indiana, Minnesota, New Hampshire, New York, Ohio, Virginia, and Wisconsin.

QUESTION

What is the difference in the matter of taxation in the state of Oregon between the treatment of privately owned and publicly owned utility plants?

(EDITOR'S NOTE: This question required such a knowledge of local law that it was referred to Hon. Oswald West, former governor and former member of the railroad commission of Oregon.)

ANSWER

IN Oregon the privately owned light and power companies pay approximately 13 per cent of their gross earnings, from all sources, in taxes.

Municipal plants are tax free.

However, projects which may hereafter be developed under the new hydroelectric district law are to become subject to taxation.

The major properties of the Portland Electric Power Company (Pepco), which serves Portland, Multnomah county, and surrounding territory, are located in Clackamas county and, through taxes, contribute largely towards the revenues of the latter county. It being feared by the Clackamas county folks that, if the city of Portland acquired, through condemnation proceedings, the properties of the Pepco and thus withdrew them from the tax roll an undue tax burden would be thrown on other properties, there was an attempt at the last session of the legislature to make all municipal plants subject to taxation but it failed. A legislative committee, however, was appointed to investigate the matter and report to the next session.

No just comparison of rates and revenues of private and municipally owned plants can be made without taking the tax question into consideration.

—OSWALD WEST.

QUESTION

At the recent convention of the National Association of Railroad and Utilities Commissioners in Richmond, Virginia, Chairman Milo R. Maltbie, of the public service commission of New York, declared that PUBLIC UTILITIES FORTNIGHTLY *had published a statement to the effect that an investigation of the Consolidated Gas Company of New York had cost between $6,000,000 and $8,000,000. According to* THE TRAFFIC WORLD, *Mr. Maltbie "said that if all the costs since the Hughes investigation of 1906 or 1907 were lumped together, there would be no such cost."*

Just what did the investigation cost the Consolidated Gas Company?

ANSWER

CHAIRMAN Maltbie's query, which was addressed to the author, Mr. Herbert Corey, was based upon the following sentence in his article, "The Cost of Investigating the Public Utilities":

"I have it on good authority that an inquiry by state authorities cost the Consolidated Gas Company of New York somewhere between six and eight million dollars."

In answer to the question raised by Mr. Maltbie, Mr. Corey checked over his source of information and replied to the inquiry in a letter from which the following excerpt is kindly furnished by the author:

"The investigation of the Consolidated Gas interests over a period of years, according to the information furnished me, aggregated more than $8,000,000.

"I regret that in my article I evidently failed to make clear that series of investigations in my mind amounted to a single inquiry. It was, after all, the cost that interested me, and my generalization not only covered the ground satisfactorily but seems to have been an actual understatement.

"As you will remember, the 80-cent gas case began in 1906 and ended in 1910; this phase of the investigation is reported to have cost the Consolidated Gas Company $3,000,000.

"The investigation of these interests begun under Mayor Hylan cost $5,000,000.

"The investigation instituted in 1923 by Mayor Walker, then a state senator, is reported to have cost from $1,500,000 to $2,000,000."

Had Mr. Corey amplified his original sentence and referred to the Consolidated Gas Company *interests*, instead of merely to the Consolidated Gas Company, his statement would have been more technically correct, as the investigation under Mayor Hylan was conducted into the closely affiliated subsidiary, the New York Edison Company, instead of into the Consolidated Gas Company itself. PUBLIC UTILITIES FORTNIGHTLY is glad to publish here Mr. Corey's expansion of his original statement.

QUESTION

Have the courts any power to fix rates for utility service?

ANSWER

RATE making is a legislative and not a judicial function. The courts, therefore, have no power to fix rates.

While rate making is a legislative function, it has been held that the rate-making power is limited; that it does not include the right to take property without compensation. A legislature, therefore, cannot fix any rates it pleases. Rates must be sufficiently high to allow the company a reasonable or nonconfiscatory return on the value of its property. The courts, therefore, have been held to have the power to determine whether or not a rate is confiscatory, but if they decide that a rate is confiscatory, they have no power to establish a rate. This must be done either by the legislature or its agent, a regulatory Commission.

QUESTION

Why is business now conducted so largely by corporations instead of by individuals and partners as it formerly was?

ANSWER

IT is commonly thought that a corporation permits of a much larger number of owners than the older forms of business organizations, but this is not the main reason for the change. A corporation may be composed of as limited a number of owners as an old partnership was. The main difference for the popularity of corporations is probably the fact that the liability of the shareholders in corporations is limited, while a partner was personally liable for all of the debts and obligations of the partnership. In the case of some special corporations, stockholders are liable up to a limited amount, but there is a limitation on the liability. Credit was extended to a partnership partly on the basis of the unlimited liability of the partners, while credit is extended to a corporation on the basis of their limited liability.

It might be thought that because of the limited liability of corporations they would not be as successful in prosecuting their business as were the older industrial organizations, but such has not been the fact.

The corporate form of organizations has been a potent factor in the development of modern industry.

How Uncle Sam's Scientists Are Serving Utility Regulation

THE practical help which the electric, gas, and street railway corporations, utility associations, and the regulatory commissions are receiving from the Bureau of Standards, told by WILLIAM ATHERTON DUPUY—*in a coming issue of this magazine.*

As Seen from the Side-lines

If you had the patience to read that voluminous and meticulous report recently made by the Investment Bankers' Association of America, you would have come across some very interesting and highly significant information.

* *

Patience would be required on your part, and diligence, too, because the report had the length of a Senate speech and it possessed the detail of a census enumeration.

* *

Our advertising friends tell us, by all means, to be brief. Our columnists have proceeded upon the theory that brevity is the soul of wit. Our sporting writers have had the ability to give a strained cartilage on the person of a mauler the momentity of the Fall of Rome. They tuck human interest, the personal equation, into their stuff.

* *

And for those numerous reasons you are tempted to turn the pages to McIntyre or an F. P. A., while neglecting the verbose resolutions of the American Bar Association or an abstract on the relationship of the parole system to modern criminal tendencies.

* *

The report of the bankers said, but not so briefly, that New York and Massachusetts have the most comprehensive systems for protection of their banks against investing in insecure public utility securities.

* *

It said that some utility bonds have been removed from the eligible list of investments in those commonwealths, one ruled by a Democrat who wants to be his party's candidate for President and the other ruled by a Democrat who is not taking it seriously but may be made his party's candidate for President.

* *

It said that not a bond of any electric light or power company has been dropped from lack of earnings in Massachusetts, and only one company has been dropped for that reason in the state of New York.

* *

Further, it stated, a host of new companies has been added to the legal, eligible list since 1927, and they have all survived the state requirements, despite the severity of the three years in which we have been existing.

* *

These requirements are exact. They are thorough, for the most part. They are enforced in those two ancient commonwealths to a more extensive degree than they probably would be in other states, if the other states had legislated such requirements.

* *

If you don't supply the ancient commonwealth of Massachusetts with all the information that it requires or with all the information about your company that it believes it ought to require, out the window you go.

* *

Your bonds in public utility corporations must have earned a certain fixed income for a period of five or more years, before the banks are permitted to invest a dime in them.

* *

Your companies and your bond and stock salesmen must have demonstrated their fitness and integrity before they are permitted to obtain a state certificate allowing them to proffer your securities for sale.

* *

Unless they part their hair on a certain side of their head and unless they wear a four-in-hand rather than an Ascot tie, your bonds may be regulated out of traffic.

* *

Against all these perversities in a land which has given itself over body

and soul to the hysteria of imbecilic regulations, the power corporations have stood on their feet like an irresistible Samson. The inanition and malnutrition suffered by business as a whole has not impaired their material fibre.

* *

SOME of the railroads have actually been hit. Unable to earn a going dividend at a time when freightage has suffered declines common to other business, and when the motor bus has attracted some or much of their short-haul business (and the railroads have been obliged by many commonwealths to contribute to grade crossing elimination in order that the trucks as well as pleasure cars might have unobstructed use of the highways) their bonds have no longer remained as legal savings banks' investments.

* *

OUT the window they have gone. Banks which bought them as long-time investments have been required to sell them on a falling market, despite the profits they have piled up for savings banks' depositors through a long period of years, and despite the profit they possibly can hold for the future.

* *

CERTAINLY the public utilities have been granted the rights to perform services and to earn profits which the public might have performed and might have earned if they had preferred to perform these services and earn these profits under a system of public ownership. And, quite naturally, they have been hemmed in by regulatory restrictions which the public believed, or which the loudest section of the public believed, to be necessary for their protection.

* *

ON the other hand, the public have been sold cats and dogs and oceans of water in the form of securities of private corporations not subject to these restrictions. The sky has been the limit and we have been operating at a time when there was no sky or horizon in sight in the financial sphere.

EITHER the public officials who impose these laws could have been thoughtful enough to hem these other securities with necessary restrictions or they could have been logical enough to remove those restrictions which impair the chance of public utility securities in the competition of an open market.

* *

THE fact is that regulation has run to such a point that railroad bonds have been dumped into a glutted market, forcing down already low prices and compelling the banks' depositors to sustain losses which regulation has helped to expand.

* *

SUCH power friends as I possess tell me that their sales of power have actually increased. About five per cent is the estimate they make. Power sales have actually gone up through the expanded use of power for domestic uses rather than power for industrial uses. The price to the public has remained reasonably stationary. The cost of materials has reduced. Those factors are to the advantage of the power companies but they have had the disadvantageous factor of being about the only ones in the United States who have responded to the appeal to spend money for plant development in order that unemployment might be relieved.

* *

YOU can hardly find any rhyme or reason in a situation which sees over-regulation fastening restrictions upon a few industries while letting all the others run amuck. The unusual financial times have seen economic philosophies disappear. Man-made laws of which there are, oh, so very many, have gone blooie. And in our life of inconsistencies you can expect Congress to legislate a new grist of them. We are always trying to catch up with the worst of things. And make them worser.

* *

John T. Lambert

What Others Think

Two Opposing Schools of Thought on "Power Regulation" Meet on Common Ground

THE recent "Power and the Public" Conference of the American Academy of Political and Social Science in Philadelphia, probably assumed both a special interest and a special importance because it looked entirely to the future.

Another factor that contributed to the interest was the character of the opposing speakers; for example, Mr. Matthew S. Sloan, president of the New York Edison Company and Mr. Donald R. Richberg, nationally known liberal lawyer and chairman of the Progressive Conference of the Public Utility Committee. Both are comparatively young men; both are fired with zeal for their respective ideals; both are energetic and confident in their respective causes.

Even a casual observer could detect from the demeanor of Mr. Sloan as he talked a light in the eye that betrayed the enthusiast. Mr. Sloan is a supreme believer in the future of his own business. He believes that his is the best possible business in the world. He believes, moreover, with Dr. F. R. Moulton, that all the laws enacted since the time of Julius Cæsar taken together have not had so dynamic effects upon the living conditions of mankind as the electrical developments which have taken place within the memory of men now living.

He visualizes the day when electricity will heat and cool our houses and light them with all the benefit of real sunbeams. He foresees perfect television. He foresees the use of electric power for almost every need of mankind at a cost almost as cheap as the flowing water that generates it. Here, for example, is a typical passage that illustrates his enthusiasm:

> "The electric power and light business, like all others, talks much about the saturation point. Recent years have shown a pronounced slowing up in numbers of new customers added to the lines. But with the reduction in prices which is bound to continue over a period of years, I can't see any limit to increased use of electricity unless and until science produces some other form of energy which will do more things for human beings and do them better and cheaper. We call the United States electrified today. It is, relatively. Our country uses more electricity than any other, nearly as much as all the rest of the world, and electricity is more generally used here, especially in industries. Nevertheless, thirty years, even twenty years hence, electricity will be used in quantities which will make today's usage seem puny, and for purposes not easily practicable with present prices and in the present state of the research and inventive arts."

BUT if Mr. Sloan is a modern, industrial Sir Galahad, Mr. Richberg is a modern economic Savonarola. Being a skeptic he lacks some of the idealism of Mr. Sloan but he makes up for this in his zeal of condemnation. He condemns the prevailing leadership of American business generally, and of the electrical business in particular. Mr. Richberg sees no millennium ahead; indeed, he sees not even a modest economic stability unless our industrial leaders do penance and disgorge themselves of their vast accumulations of wealth. Mr. Richberg sees the power of industry as a type—worse yet, an arch type—of the blind Frankensteins of American business that threaten to crush proletarian earning power, to wreck American as well as world political economy, and to lead eventually to disaster. Here are two scorching paragraphs from his blistering indict-

ment of the electric power industry:

"It is just as unreasonable to impoverish one's own generation upon the promise that future generations will be made prosperous as to impoverish one's own life upon the promise of happiness in an unknown future life. Industrial leadership has unfortunately copied too much of its technique from an antiquated religious leadership. Its economic notions are frequently as out of date as the Puritan sabbath. Despite the prophecies of its banquet orators, future generations will never know the impossible combination of a satisfied plutocracy and a contented democracy. Those who have eyes capable of seeing should at least point out the economic absurdity of this anticipated social order and the political certainty that any population not composed of anæmic imbeciles will eventually destroy a ruling class that becomes obviously insane."

"In the electrical industry the operations of the prevailing system are clearly exemplified. We find many of the largest operations in this field conducted in a financial structure which is economically indefensible, with a maze of holding companies and operating companies and bonds and debentures and stocks which offer gambling chances, instead of security to the investor, who in many instances would never invest if he knew how insubstantial were the claimed values behind his securities. We have here also an industry openly operating for the most part on the policy that commercial enterprises should be favored over domestic consumers, thereby making it much easier to increase production than to increase consumption, encouraging one of the worst faults of our industrial leadership."

It was only when Mr. Sloan discussed the future of power regulation that Mr. Richberg met him on common ground. Mr. Sloan defends the trend of consolidations. He predicts that it will continue until industry is organized into logical operating units. He concedes that there have been abuses and occasional crookedness, but he claims that the job of electrifying America could have been accomplished by no other means in so short a time than corporate merger. He stated:

"Economically, this process has justified itself. Therefore, it will continue. It must continue if utilities are to do the job of the future. Only big agencies can handle a job of such size. The operating utility is on the way to become a statewide organization. These large utilities increasingly will be linked together under regional holding companies. Thus natural geographic areas can be most efficiently and economically supplied with electricity, and thus, I believe, can the supply system be most efficiently set up and administered.

"To reach such stage of development will involve changes in corporate structures and utilities' relations with government agencies. The tendency today is to merge contiguous operating companies and to simplify corporate structures by eliminating intermediate holding companies. This should and, I am sure, will be continued as a matter both of good business practice and good public policy. The statewide operating companies of the future will be under state regulation so the user of electricity will have all the protection he now enjoys, and more, because as the utility industry progresses the laws governing its operation should and must progress in step with business development. These operating companies will interchange power across state boundaries. The contracts by which they buy and sell this power, and the prices, will come to be supervised and regulated either by regional conferences of the state regulative authorities, or by Federal authority."

Mr. Sloan condemns the paternalistic trend in governmental operation. He shudders at the possibility of the nationalism of the power industry, but he seems absolutely confident that the American people will find the correct way out of the present power controversy. He said:

"In my judgment there are two reasons why our electrical future will not go that way. The first is that in spite of many branches of the rule, our national policy and practice are opposed to government conduct of business which can be satisfactorily carried on by private enterprise. Assume that three quarters—surely a liberal estimate—of all now said in criticism of utility operation and public regulation is accurate. Against that put the uncontested facts of the wide development of electric service by utilities, its high technical standards, the steadily increased use of current and decreased prices. It becomes hard to see where a case has been made requiring a shift to government ownership and operation.

"The second reason is that this country, wealthy and powerful as it is, could not take over and operate the electric utilities on any basis of sound business. Government, which is essentially political, must and will handle matters differently from business. Business seeks only to continue successful and to grow, which on a long-

term basis means serving customers to their satisfaction. It can't buy success with patronage or cover up failures in the tax levy. It must root, hog, or die. Government is under no such necessity, and with its set-up of checks and balances and diffused authority and responsibility couldn't meet business requirements if it were under this necessity."

THE burden of Mr. Richberg's message was his attack upon the maldistribution of wealth in this country; on this he lays the whole claim for our present economic troubles. The electrical industry, he says, has been a ringleader in the orgy. It has powered the machines that every day turn to the greater impoverishment of the working man. It has been the greatest aid in the modern industrial process of making the rich richer and the poor more dependent upon the bitter crumbs of charity. He said:

"Since the beginning of this century the horsepower in manufactures, per wage earner, has increased about 150 per cent—roughly from 2 to 5 horsepower. The production of electricity has increased over this period from less than five billion to more than one hundred billion kilowatt hours, which indicates the influence of electrical power in adding to the productive capacity of the wage earners. But the workers' percentage of added value of manufactured products has continued to decline, which is consistent with the peculiar course of our entire industrial evolution. It is most disheartening to observe that in the last eighty years the share of the manufacturing wage earner has declined from 23.3 per cent (in 1849) of the value of finished products to 16.5 per cent (in 1929); and that whereas he formerly received (in 1849) 51.1 per cent of the value added to raw material by his labor he now receives (in 1929) only 36.2 per cent of this value."

What does it matter in Mr. Richberg's opinion then, that the average per capita wealth of our population shows an increase? What difference does it make that the average price per kilowatt for electricity has diminished each year? Such gross figures mean nothing—less than nothing; they are misleading. It ought to be obvious, even to our industrial Napoleons, that the production value of an owner's property is its ability to command a price—that such value depends not only upon the desire but also the capacity of someone to pay that price. All the high-pressured salesmen in the world, all the load-building inventiveness of the power industry, are wasted effort upon a customer whose pockets are becoming more and more empty.

MR. Richberg is rather hard upon the electrical industry. His frequent use of such terms as "lunatic" and "stupidity" indicates a lack of poise that one customarily expects of a temperate thinker. He suffers somewhat from an excess of zeal, but for all that he gave voice to some passages that are very interesting. Here is one of them:

"We find here also an industry dominated by an un-American labor policy, denying the historic freedom of American life to its employees, and at best subjecting them to a degrading sort of paternalism. Worst of all we find that this industry has produced the newest, the latest, and perhaps the largest crop of private regulators of government who have, as an industrial policy, deliberately sought to control government and public opinion through a systematic corruption of public officials and through persistent methods of poisoning the sources of public opinion and even public education. These are not rumors that I repeat. This is knowledge gained from years of personal experience. For years the electrical industry in Chicago and Illinois has nourished a political government of gangsters and grafters. The future of this industry under such a leadership is not bright with a promise of advancing the general welfare.

"But no sane man can approve of a mad program of organizing for mass production without organizing for mass consumption; or of socializing industry under monopolistic controls in order to preserve individual freedom and the competitive incentives; or of enthroning a class control of government in order to avoid a class struggle and to preserve democracy, or of promoting public service and advancing the general welfare by inciting selfish greed and encouraging the hope of extortionate private profits."

ALTHOUGH Mr. Sloan spoke prior to Mr. Richberg, he made one contention that might almost be taken as an answer to Mr. Richberg's denunciation of holding company abuses.

Mr. Sloan takes the position that the critics of the utility holding companies are making the proverbial mountain out of a molehill. He is willing (for purposes of argument only, of course) to concede three quarters of all the accusations of waste, fraud, and graft as true. Let the critics compute the costs of these abuses—add them up and divide the total by some twenty million domestic consumers. Mr. Sloan intimates that if the difference in the average domestic electric bill amounts to more in one year than the price of a box of good cigars he will eat the bills—all twenty million of them!

A most surprising result can be deduced from these two speeches. It is the conclusion that, in the final analysis, Mr. Richberg and Mr. Sloan do not differ so radically after all in their views of what the future ought to be. Admittedly this challenges a belief, but just summarize the propositions in which both concur:

First of all, the most convincing repudiation of government ownership and government interference with business comes, not from Mr. Sloan, but strangely enough from the mouth of Mr. Richberg himself:

> "It is not my proposition that politically organized boards—that governmental regulators of industry—are inevitable. I have the deep-seated prejudice of a libertarian against creating a multiplicity of boards empowered to write rules and regulations, to build fences and runways all around us, so that we may be classified and segregated like cattle and sheep and then branded and driven to meadows and stalls and cattle cars, and fed and milked and sheared and eventually used up in the service of some abstract concept of society. To me the supreme function of social organizations is to create freedom, to give as far as possible to every individual an equal opportunity to do his best, or his worst, for himself. There is no fertile soil for Marxian socialism in that philosophy."

Next, Mr. Richberg thinks that the future of American industry lies in the ability of its leaders, disregarding altruism, and inspired solely by hard-headed business logic, to recognize the fact that the workers must earn money before they can buy. He said:

> "But the principal choice between self-government in industry and outside government over industry is the manner of selecting the governors. Any machinery of control must have sanctions—a power of compulsion which either directly or indirectly will check self-interest, so that an individual may not seek a temporary or special gain at the expense of the permanent or general gain. If industrial leaders are capable of self-organizing for social control, they are capable of dominating any political organization of industry. If they are incapable of voluntary coöperative action, political action will be inevitable, either soon and peacefully or late and forcibly."

Now let us compare this with the paragraph of Mr. Sloan's address:

> "Supplying the vast volume of electricity which our country will demand in future will necessitate growth and development in the electric utility field. I have outlined my ideas of the technical side of this development. There will be changes on the corporate side which will present political, legal, and sociological problems."

Mr. Sloan will probably balk at any specific program for settling these "sociological problems" which Mr. Richberg might work out, but both are agreed that there will be such problems and that industry must bear its share of the burden. Both are agreed that the government ought to be kept out of the picture if possible, and that it will be possible if industry develops sufficient leadership to regulate itself. Their chief difference seems to be in that Mr. Richberg doubts if this can be done while the optimistic Mr. Sloan is sure that it will be done.

Acknowledge that his views were harmonized with those of Mr. Sloan would probably be just as disconcerting to Mr. Richberg as to Mr. Sloan, but there is no denying the essential points of agreement. Here are two men of radically different temperament, background, and connections, approaching the same problem from diametrically opposite viewpoints, and yet they finally arrive suspiciously near the same conclusion—namely, that the future of the electrical industry will de-

pend upon its leadership to cope with technical, economical, and "sociological" problems.

Perhaps an explanation of this strange harmony can be found in the observation of Carlyle to the effect that Truth has many different colored garments and the very pessimism of Schopenhauer and the optimism of Leibnitz may be, after all, but different facets of the same Diamond of Wisdom.

—F. X. W.

OUR ELECTRICAL FUTURE. Address by Matthew S. Sloan. Academy of Political and Social Science. Philadelphia: November 7, 1931.

THE FUTURE OF POWER AND THE PUBLIC. Address by Donald R. Richberg. Academy of Political and Social Science. Philadelphia: November 7, 1931.

The Position of the Anti-Utility Bloc in the New House

OLD Man Hanover of Big Horn county years ago mined for gold on a corner of his ranch. After some months of fruitless digging John Day, who was his fruitless digger, stumped into the ranch house.

"This is all dang nonsense," said John Day. "I'm going to quit. There ain't no gold in that hole and anyhow, you owe me five months' pay."

"Don't quit, John," urged Old Man Hanover. "I'll raise your wages twenty dollars a month."

"When do I get the money?" asked John Day.

"Jest as soon as we strike gold in the mine," said Old Man Hanover.

So John Day went on working for Old Man Hanover until the sheriff came.

The fiscal troubles of Mr. Hanover and Mr. Day are recalled by the present miseries of the progressives in the House of Representatives. The sheriff has come.

There were not, and there are not, many of them, but only a little while ago they were the balance of power. Their position, as seen by *The Argonaut*, is described thus:

> "For a long time progressives in congress have been annoying, but this, as far as memory serves, is the first time they have been ridiculous.
>
> "It all arose out of the presumed doubt about organization of the next House. Solemnly the Badger congressmen met and informed the Republican high command that, unless certain liberalizations in the rules were granted, they would not support a Republican nominee for speaker. They proceeded on the theory that they held, and would continue to hold, the balance of power. With stern visage, and harsh words, they presented their ultimatum.
>
> "Before an answer could come, the elections intervened. Up in Michigan about half the Republicans in a stalwart old district decided to go wet and anti-administration, and as a result the Democrats captured control of the house. They have that mathematical control without the vote of a single Republican insurgent, whether from Wisconsin or elsewhere. The Wisconsin delegation, by the vote of the good people of Saginaw, became as important as the Socialist vote in Wall Street."

Mr. W. H. Grimes writes in the *Wall Street Journal:*

> "Democratic control of the House of Representatives, even though the margin be small, will nullify the influence which the small group of progressives were preparing to exercise and will wrest from them the trading position they might have wielded as possessors of the balance of power.
>
> "In recent years the progressives have operated as a separate party except at elections, and had the republicans been able to count a nominal majority only by including progressive noses this small group might have been able to direct the course of legislation. As it is neither party will have anything to gain by making concessions to progressives. Consequently none will be made."

An indication that Mr. Grimes's forecast is probably right is the fact that

the progressives have fallen off the first pages. Only a few weeks ago they had a firm position between Harbin, Manchuria, and Al Capone. They were spot news. When one of them developed a hum in his mental machinery the country listened. A householder may not be pleased to hear a pane of glass crack at 2 o'clock in the morning, but he sits up in bed. Now the progressives have taken up a position somewhere near the quotations on soy beans. Their disturbance value in the next House has disappeared. To hold place on the first page in these days a progressive would have to go over Niagara Falls in a barrel.

It was a good many years ago that Old Man Hanover persuaded John Day to keep on digging a hole in the ground by progressively raising the rate of the wages he could not pay. It was a completely worthless gold mine but it bade fair to become the most stupendous hole in history. It might have drained the wells of Big Horn county and been a deadly trap for range cattle.

But the sheriff came.

—HERBERT COREY.

END PROGRESSIVE HOPE FOR POWER. By W. H. Grimes. *Wall Street Journal.* New York. November 9, 1931.

A JOKE ON WISCONSIN. *The Argonaut.* San Francisco, Calif. November 13, 1931.

The Declining Importance of Valuation as a Rate Base

"COMPETITION knows no rate base." This pithy remark has been attributed to a prominent leader in a conversation some months ago dealing with matters on utility regulation. The position so often taken by strict adherence of the reproduction cost doctrine in utility valuation is that, unless dominant consideration is given to reproduction cost value in ascertaining utility rate base, constitutional confiscation cannot be avoided.

Today there is a growing belief that valuation, whether based upon reproduction cost or upon prudent investment, is rapidly becoming a matter of minor importance, inasmuch as its final effect upon the actual making of utility rates is concerned.

There are a number of factors that tend towards this minimizing of the importance of valuation. Chief among these probably is the factor of competition. When one utility must meet the rates of another utility, it does not stop to argue about fair return upon any particular variety of a rate base. Both cut rates to the bare bone in an effort to run each other out of business. If this is true of competition between privately owned plants, who must "root, hog, or die" upon their own merits, *a fortiori,* it is true of competition between governmentally owned plants, who have the backing of government treasuries to carry on their competitive struggle indefinitely. Hence the truth of the remark quoted in the opening paragraph.

THE diminishing importance of valuation in modern utility rate making seems to be recognized by parties active in regulation who differ on many other regulatory matters.

Former Judge William L. Ransom has long been a most able and successful counsel for various public utility companies in New York state. One might say he had a "corporation background." On the other hand, Henry C. Attwill, chairman of the Massachusetts Department of Public Utilities, has usually been regarded as one of our liberal commissioners. Yet both of these noted figures in regulatory circles agreed at the recent power conference of the American Academy of Political and Social Science in Philadelphia, that utility valuation is probably destined

to take a back seat in the near future.

REGULATION first sprang into national importance as far back as 1898, when the Supreme Court of the United States decided the famous landmark case of Smyth *v.* Ames. This case, which was nicknamed by Dr. John A. Ryan of the Catholic University the "Dred Scott decision of the utility regulation," gave birth to the classic struggle between those who believe utility rate base should be dominated by reproduction cost value, and those who believe that investment cost or prudent investment should control.

Now, after all these years of fighting before the courts, commissions, newspapers, magazines, and even over the radio, we are suddenly told that it is a tempest in a teapot and that the future importance of valuation suspiciously resembles the proverbial hill of beans. Mr. Ransom stated:

> "From observation and experience, however, I submit the following for your consideration: The so-called 'valuation controversy' seems to have lost a good deal of its vigor and vitality. It does not seem to 'click' as a major political issue. It does not seem to function in the present tense. It does not 'speak' in the language and terms which people generally are using as to the public utilities. There are signs that it has become pretty much a 'sham battle,' still something of a political parade-ground, but nevertheless, a field largely abandoned by those who had planned to wage there an epoch-making conflict."

Mr. Ransom, a veteran of much hard-fought regulatory litigation, seems to think that valuation is chiefly used as a yardstick to protect the public on one hand from excessively high rates, and to protect the utilities on the other hand from confiscatory rate orders. But between these extremes, valuation as such does not enter the minds of either the utilities when they are drawing up proposed rate schedules or the commissions when they are approving or disapproving of them.

MR. Ransom further arrives at the conclusion that the difference between regulation of the so-called "prudent investment" variety and regulation based upon Federal decisions amounts to very little. It has become fairly clear that in many states extensive rate reductions are being brought about by the commissions and the rates are being kept reasonable with no serious obstacles interposed by judicial decisions on valuation. Mr. Ransom pooh-poohs the idea that the present value concept makes rate litigation hopelessly protracted. He says that some of the most protracted cases have been tried only on the "prudent investment" theory; and that rate hearings have been found to last long, even when all questions of valuation, property, and return have been excluded.

Mr. Ransom has other explanations for the diminishing importance of valuation than the force of competition. He stated:

> "On the one hand, we have a radical or revolutionary attitude, which in its most violent forms is flaming 'red' and in its milder forms seems to be a revival of the Granger movement and a later Populism. The adherents of this school have stopped bothering themselves whether the return is to be figured on 'present value' or 'prudent investment'; they are opposed to any return or net earnings at all. All net earnings, and even all gross revenues, are denounced by high authority as 'profits' extorted from the people.
>
> "This school of thought or 'direct action' has certainly left the 'valuation controversy' far behind. Its members demand rate reductions and no longer make reference to facts as claimed to justify them. 'Reduce first, and investigate afterwards, if at all,' is the demand. I have heard it seriously urged before a commission that no unemployed person should have to pay any utility bills, and that during the present or recent depression, the service of no customer should be cut off for failure to pay bills. Violence was boldly threatened as the penalty of refusing this belief.
>
> "On the other hand, we have, I believe, an increasing number of regulatory commissioners and utility executives who, in an open-minded, flexible, and constructive way, are trying to move ahead and accomplish fair and practicable results, step by step, along lines which promote the long-run public interest. In a large number of states, this manner of public regulation was never as active and as effective as at the present time. Large scale results are

being brought about, for public benefit and advantage. Naturally, in such a constructive and coöperative program, there is no need, and little place, for violent controversy about 'valuation' or anything else which belongs in the arena of warfare rather than adjustment."

Mr. Ransom fired a parting shot at states which have inadequate commissions. He conceded that no state should be required to have more of a commission or a staff, or more of regulation, than its people want and are willing to pay for, but he warned that laggard states may put the whole structure of state regulation in jeopardy.

COMMISSIONER Attwill differed with Mr. Ransom on a number of points but agreed on the proposition that valuation will have to sing a small part in the future in the following terms:

"Valuation as a help in the regulation of a public utility in my opinion is of minor importance. In the last twenty or thirty years it has been given altogether too much emphasis, and the insistence by those controlling public utilities on its use as a basis upon which rates are to be fixed has led to the paralysis of regulation in most parts of the country and has strengthened the position of those advocating public ownership."

The principal reason assigned by Commissioner Attwill for this tendency was the factor of competition already mentioned. He said:

"It is ridiculous to expect that the public will long permit these privately controlled monopolies performing a public service to continue to furnish that service if the cost to the public is to be much in excess of what it would cost the public to furnish it directly, or if the machinery of regulating the utility is so costly and cumbersome as to in effect nullify the regulation. Thus, in my judgment, in the regulation of electric rates we are dealing with a practical and not a theoretical question, and the determination of what is a fair return upon the capital invested is to be determined by the law of economics and not by that of courts."

The speaker went on to show that regulation carried on under the prudent investment theory in the state of Massachusetts, with cool disregard for the practice followed in other states, has worked out very successfully; producing cheap rates, good service, and soundly financed utilities.

It follows naturally from this that Commissioner Attwill prefers the prudent investment brand of valuation to the present value variety that has the official O. K. of the Supreme Court. He outlined six main objections to the present value system of regulation:

(1) It slows up regulation and in a great measure makes it ineffective. (Note here the sharp disagreement in opinion with Mr. William L. Ransom's statement). (2) It is costly in administration and its cost cannot be justified by the results. (3) It wrongfully includes the depreciation reserve as a basis of the return, because as a practical matter it is invested in the plant. (4) Valuations made under the so-called Federal formula result in rate bases much in excess of what it would cost to construct a new plant capable of performing the service as well as the one in operation. (5) In practical operation it substitutes the judgment of a master appointed by a court for that of the duly sworn body of ostensible experts created by the state for that particular purpose. (6) It is an incentive to inefficiency, placing as it does a premium on intangible values and failing to penalize inadequacy or obsolescence that would not accrue under alert management.

COMMISSIONER Attwill concluded with a warning that there would be regulatory rebellion in the Bay state if the people of the other states or the Federal courts persisted in their attempts to ram down the throats of the good Massachusetts people their own concept of governmental morality. He stated:

"Those who contemplate buying into Massachusetts utilities with the thought that they can impose upon its people the Federal idea of regulation, with the purpose of increasing the revenues of the utilities, I advise not to so invest. If I judge the temper of the people of Massachusetts correctly, they will never submit to such a type of regulation. We may be

forced into some form of contractual relation. Failing that, I am quite sure the people of Massachusetts will abandon regulation and substitute therefor public ownership."

All of which seems to prove the wisdom of the short and snappy remark, "Competition knows no rate base."

—M. M.

IMMEDIATE PHASES OF VALUATION AND RATE PROBLEMS AS TO THE UTILITIES. By Ex-Judge William L. Ransom. Address before the American Academy of Political and Social Science. November 7, 1931. Philadelphia.

VALUATION. By Henry C. Attwill. Address before the American Academy of Political and Social Science. November 7, 1931. Philadelphia.

The Financial Condition of the Australian Railways Under Government Ownership

RECENT report of the Public Utilities Committee of the Progressives Conference recommended that American railroads might thrive on a system of governmental operation. They point with pride to the alleged success of the governmentally operated railroads in Canada as an example of what might be expected if such a program were adopted in this country.

Be that as it may, anyone seriously interested in whether or not governmental operation of railroads would be a good thing for America might pause to consider the experience of the Australian Government disclosed by a recent economic survey of Australia, published in *The Annals*, which is the official organ of the American Academy of Political and Social Science. The chapter on "Control of Transport" is contributed by Mr. A. G. Whitlam, a lecturer of the University of Melbourne. The unhappy financial conditions of the Australian Railway System parallels the unhappy financial condition of the Australian Government itself, whose bonds are now receiving such black looks from the gentlemen who play all day on Wall Street.

The accompanying table gives a perspective picture of the operating financial statistics of the Australian Railways.

The sad story can be seen at a glance in the fifth line of the table

ITEM	1926 (£)	1927 (£)	1928 (£)	1929 (£)	1930 (£)
	(Year ended 30th June)				
Capital invested in railways	288,391,955	303,785,388	311,131,906	323,770,550	334,000,000
Revenue	45,579,475	48,592,836	48,186,022	48,815,726	(approx.) 45,852,919
Working expenses	39,143,169	39,990,887	38,358,104	38,516,571	38,320,720
Interest	13,539,357	14,378,611	14,785,137	15,458,680	16,023,838
Loss incurred	7,103,051	5,776,662	4,957,219	5,159,525	8,491,639
Surplus of earnings over working expenses	6,436,306	8,601,949	9,827,918	10,299,155	7,532,199
	(Per cent)	(Per cent)	(Per cent)	(Per cent)	(Per cent)
Percentage of interest to total revenue	29.7	29.58	30.68	31.66	34.94
Percentage of net revenue to capital	2.23	2.83	3.16	3.18	2.26
Percentage of working expenses to revenue	85.88	82.30	79.60	78.90	83.57

FIGURES THAT SHOW THE EFFECT OF GOVERNMENTAL OPERATION OF AUSTRALIAN RAILROADS

in the item entitled "Loss incurred."

The critics of government railway operation, however, should not be too hard on the Australians. There are extenuating circumstances. Probably the greatest extenuating circumstance is the fact that under the prevailing law there new railway construction must first be authorized by the Parliament concerned. The operating commissioners have no power to prevent the building of a railway, whether they think it is needed or not, but when it is constructed (by another department) it is handed over to them for operation. As a result of having losses which have occurred on so many ill-conceived branches of the Australian system, it has become obvious that this method of determining the need for additional transport facilities does not insure adequate consideration to economic factors. Mr. Whitlam says:

> "Throughout Australia, the railways are suffering severely from road competition. Losses of revenues due to the use of private motor vehicles and direct competition from public road carriers of freight and passengers were estimated by the Commonwealth Transport Committee at between £2,000,000 and £3,000,000 in 1928. In addition, competition from interstate shipping has become more intense and air services are gradually increasing their inroads on passenger traffic—all at a time when there is a decline in the rate of economic development."

Over-capitalization of railways has been estimated at £81,500 but eminent authority on railway finance considered that this may be regarded as a conservative figure.

—G. P.

AN ECONOMIC SURVEY OF AUSTRALIA. The American Academy of Political and Social Science. *The Annals*, November, 1931.

A Review of 1931 Bus Legislation

THE rapid increase in the number and uses of busses in commercial transportation has, naturally enough, brought a corresponding increase in the number of laws affecting these vehicles. A recent survey in *Bus Transportation* reveals the fact that approximately 7,000 bills affecting highway users were introduced in 44 state legislatures during the 1931 session, of which about 10 per cent specifically affected busses.

Up to the time the survey was made it was found that automotive registration fees covering the entire vehicular field were increased in eighteen states and decreased in one. Taxes directly applying to busses were revised (mostly upward) in approximately fifteen states.

With the exception of the new taxing laws, the legislative review seems to show that most of the bills, regarded by the bus industry as "ruinous" and instigated by the railroad interests in an endeavor to obstruct highway travel, were killed by the state legislatures.

On the other hand, legislation regarded by the bus industry as "constructive and helpful" was enacted in a number of states, notably in California, Michigan, and New York.

THE California law makes it a criminal offense to sell passenger transportation to unlicensed carriers. It is designed to stop "wildcat" operations complained of by the California Railroad Commission. The Michigan law is a complete revision and restatement of the motor bus regulatory act of that state tending to stabilize the industry by protecting certificate rights and defining commission jurisdiction. The Thayer Bill, in New York state, empowers the state commission to grant bus certificates for routes through two or more municipalities without the consent of local authorities.

As to traffic and safety regulation, Mr. Arthur M. Hill, president of the National Association of Motor Bus Operators, reports that thirty states have adopted important provisions of the Uniform Motor Vehicle Code. The accompanying table shows the

Changes made in the various states as compared with the 1930 laws; these figures were compiled by the Motor Vehicle Conference Committee

	Width in inches		Overall height in feet and inches		Length in feet		Max. Weight allowable on one wheel		Gas tax
	1930	1931	1930	1931	1930	1931	1930	1931	1931
Alabama	96	96	14–6	*12*	33	33	.....	*6,000*	4
Arizona	96	96	14–6	14–6	30	30	9,000	9,000	*5*
Arkansas	96	96	14–6	14–6	33	33	8,250	8,250	*6*
California	96	96	13–6	13–6	33	33	8,500	8,500	3
Colorado	..	..	....	....	..	..	11,200	11,200	4
Connecticut	102	102	....	....	40	40	12,000	.....	2
Delaware	96	96	12–2	12–2	33	33	8,000	*9,000*	3
Florida	84	84	12	12	..	..	8,000	8,000	6
Georgia	96	96	12–6	12–6	30	*35*	8,800	....	6
Idaho	96	96	14–6	14–6	33	33	8,000	8,000	*5*
Illinois	96	96	....	....	..	..	8,000	8,000	3
Indiana	..	*96*	....	*12*	..	*33*	11,200	*8,000*	4
Iowa	96	96	....	*12*	..	*33*	8,000	....	3
Kansas	96	96	13	13	33	*35*	8,000	*9,250*	3
Kentucky*	90	90	....	....	..	..	9,000	9,000	5
Louisiana*	96	96	14–6	14–6	33	33	12,500	12,500	*5*
Maine	96	96	12–6	12–6	..	..	8,000	8,000	*5*
Maryland	93	93	....	....	..	..	....	....	4
Massachusetts	102	102	....	....	33	33	....	....	*3*
Michigan	96	96	14	14	40	40	9,000	9,000	3
Minnesota	96	96	12–6	12–6	35	35	11,200	11,200	3
Mississippi*	..	..	....	....	..	..	....	....	5
Missouri	96	*96*	12–6	12–6	30	*33*	8,000	8,000	2
Montana	..	*96*	....	*14–6*	..	*33*	....	*8,400*	5
Nebraska	90	*96*	12	*12–6*	..	*35*	8,000	8,000	4
Nevada	..	..	....	....	..	..	....	*9,000*	4
New Hampshire	96	96	....	....	30	30	7,500	7,500	4
New Jersey	96	96	12–6	12–6	28	28	9,800	*10,400*	*3*
New Mexico	96	96	14	14	33	33	9,000	9,000	5
New York	96	96	....	*13*	..	*33*	11,200	11,200	2
North Carolina	90	90	12–6	*12*	30	*33*	....	....	*6*
North Dakota	96	96	14–6	14–6	33	*35*	....	....	4
Ohio	96	96	12–6	12–6	30	30	9,000	9,000	4
Oklahoma	90	90	....	....	..	..	8,000	8,000	*5*
Oregon	96	96	....	12 *11 on 7–1–32*	..	*34*	8,000	*8,500*	4
Pennsylvania	96	96	14–6	14–6	33	33	9,750	9,750	3
Rhode Island	102	102	12–6	12–6	..	..	11,200	11,200	2
South Carolina	90	90	12–6	12–6	33	33	7,500	7,500	6
South Dakota	96	96	....	....	..	..	8,000	8,000	4
Tennessee	96	96	12	12	..	..	....	....	*6*
Texas	96	96	*14–6*	*12–6*	33	*35*	9,000	9,000	4
Utah	96	96	....	*14*	..	*33*	7,500	*9,000*	*4*
Vermont	96	96	12	12	..	..	....	....	4
Virginia*	96	96	12–6	12–6	30	30	8,000	8,000	5
Washington	96	96	....	....	35	35	9,250	9,250	*5*
West Virginia	90	*96*	12	12	40	*33*	9,000	*11,200*	4
Wisconsin	96	96	....	....	33	33	9,500	9,500	*4*
Wyoming	96	96	12–6	12–6	30	30	9,000	9,000	4
Dist. of Columbia	96	96	12–6	12–6	30	30	11,200	11,200	2

**Not in session this year.*

THE PHYSICAL LIMITATIONS IMPOSED UPON THE MOTOR BUS INDUSTRY BY THE VARIOUS STATES, INCLUDING CHANGES MADE IN 1931

physical limitations imposed upon busses by the various states, including changes made during 1931:

Six states in 1931 enacted safety-responsibility laws bringing the total states with such laws up to eighteen. Fifteen states and the District of Columbia require mandatory examination as a prerequisite to securing a driver's license. Michigan enacted a scatter-proof glass law effective for busses.

—M. M.

BUS LEGISLATION. By Jesse T. Hiller. *Bus Transportation.* August, 1931.

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A HISTORY OF AIRCRAFT. By F. Alexander Magoun, S.B., S.M. and Eric Hodgins, S.B. McGraw-Hill Book Company, Inc., New York, New York. 1931. 496 pages.

CANADA'S TRAPOT DOME AND ITS AMERICAN PARALLELS. House of Commons' Investigation and Report of the Beauharnois Power Development on the St. Lawrence river in Quebec. By Judson King, Director National Popular Government League. October 19, 1931.

EVERYMAN AND HIS COMMON STOCKS. By Laurence H. Sloan. Whittlesey House. McGraw-Hill Book Company, New York. 1931. 306 pages. Price $2.50.

Other Articles Worth Reading

A PLEA FOR THE REGULATION OF THE POWER INDUSTRY. By Morris Llewellyn Cooke. *National Municipal Review;* November, 1931.

The advantage to be derived from improved public control of the power industry as compared with public ownership.

A COMPARISON OF PUBLIC AND PRIVATE ELECTRIC UTILITIES IN MASSACHUSETTS. By Charles H. Porter. *The Journal of Land & Public Utility Economics;* November, 1931.

APPLIANCE MERCHANDISING BY PUBLIC UTILITIES. By Warren Wright. *The Journal of Land & Public Utility Economics;* November, 1931.

COMMISSIONERS MILITANT IN DEFENSE OF STATE RIGHTS. A summary of the opinions expressed at the annual meeting of the National Association of Railroad and Utilities Commissioners. 1931. *Electrical World;* November 7, 1931.

CONNECTICUT'S REGULATION OF GRADE CROSSING ELIMINATION. By Clyde Olin Fisher. *The Journal of Land & Public Utility Economics;* November, 1931.

I AM ONLY A RAILROAD MAN. By Daniel Willard, President, Baltimore and Ohio Railroad (as told to George Sylvester Viereck). *Liberty;* November 14, 1931.

JUDICIAL SUPERVISION OF COMMISSION REGULATION: A STUDY OF COURT AND COMMISSION RELATIONS IN MASSACHUSETTS. By Mary Louise Ramsey. *The Journal of Land & Public Utility Economics;* November, 1931.

OBJECTIONS TO VALUATION BASIS OF UTILITY REGULATION. By Henry C. Attwill, Chairman, Department of Public Utilities of Massachusetts. *The United States Daily;* November 19, 1931.

THE OUTLOOK FOR THE UTILITIES. *Barron's;* November 16, 1931.

TRANSPORTATION OF GASOLINE BY NETWORK OF PIPE LINES. By Paul A. Walker, Chairman, Corporation Commission, State of Oklahoma. *The United States Daily;* November 4, 1931.

UTILITY SECURITIES SOUND INVESTMENTS. By Matthew S. Sloan, President, New York Edison Company. *Electrical World;* September 26, 1931.

VALUATION OF PUBLIC UTILITIES AS AID IN REGULATION. By Henry C. Attwill, Chairman, Department of Public Utilities of Massachusetts. *The United States Daily;* November 16, 1931.

WEAKNESSES OF GOVERNMENT IN BUSINESS. By W. H. Onken, Jr. *N. E. L. A. Bulletin;* September, 1931.

The March of Events

Alabama

City Tests Electric Rate by Diesel Plant Substitute

THE public service commission on November 16th began hearings on complaint of the city of Troy against the Alabama Utilities Company in which the city alleges that rates for current furnished to the city under contract are unjust, unreasonable, and discriminatory. Testimony was produced by city witnesses to show that with the use of Diesel engines the city could build a plant and supply itself with adequate current at a cost much less than the city now pays to the utility company. It was said that current from a Diesel engine plant could be supplied at an average cost of 1.5 cents per kilowatt hour, while the city is paying the company an average of 2.2 cents per kilowatt hour.

A consulting engineer, testifying for the company, expressed the opinion that Diesel engines would be impractical for the supply of current for Troy. He also submitted an income statement of the company showing that the net return from the entire operation for the year ending June 30th was 2.66 per cent on the value of the company's properties for rate-making purposes. He fixed a value at $3,834,622.

The statement showed the amount allocated to various towns served by the company's system prorated in proportion to the cost of serving each town. The city of Troy, it was stated, pays 4.75 per cent for service under its contract.

Mobile Gas Company Asks New Franchise

THE Mobile Gas Company has applied to the board of city commissioners for a new 30-year franchise to distribute natural and artificial gas in Mobile, it is reported in the Mobile *Register*. The granting of this franchise would have the effect of ending a dispute between the municipality and the utility over the company's franchise status.

The proposed franchise provides for the payment of a gradually increased franchise tax to the city for the first five years, beginning at $8,500 and climbing to $12,000. After the expiration of five years the tax would be paid on a basis of 2 per cent of the company's gross annual income, with a condition guaranteeing the city not less than $12,000 a year for the last twenty-five years of the life of the franchise.

The city, during recent years, has received approximately $4,000 a year from the company in franchise taxes. The utility in addition has paid a business license fee of $2,500. It is stated that the new franchise would not affect the question of continued levying of the license tax, nor would the franchise entitle the gas company to exclusive privileges of gas distribution.

California

San Francisco Demands Large Reduction in Gas and Electric Rates

THE railroad commission, at the request of City Attorney John J. O'Toole, has designated President Clyde L. Seavey to conduct hearings on the question of lower gas and electric rates. This is a reopening of proceedings which resulted in 1929 in a reduction in rates. The rates established were termed temporary at the time that the Pacific Gas & Electric Company and the Great Western Light & Power Company were about to merge and natural gas was to be brought into San Francisco.

City Attorney O'Toole and Dion Holm, chief assistant district attorney, who is in charge of rate litigation, declare that the effects of operation since that time show that a reduction should be made below the temporary rates. They insist that economies resulting from the consolidation of the utilities and the result of savings should be reflected in lower rates.

These claims are disputed by the company, which maintains that interest on in-

vestments to increase the electrical output and to bring natural gas to the bay region have offset the economies, says the San Francisco *News*.

Utility Agrees on Natural Gas Program on Conditions

THE San Diego Consolidated Gas and Electric Company, it is reported in the San Diego *Sun*, has agreed to bring natural gas into the San Diego district, but on certain conditions. Company officials believe that there should be a modification in the rate proposals made by Mr. Lester S. Ready, city's consulting engineer, and they believe that the council should outline a definite policy regarding electric rates. Members of the council recently directed attacks at the company's general electric rates and against the rates charged for street lighting.

Commission Seeks to Develop Proper Agricultural Power Rates

MEANS of developing an agricultural power rate schedule that would not put an unusual burden on agriculture at times of other afflictions, says the San Jose *Mercury-Herald*, is being sought by the state railroad commission. This paper adds:

"This was indicated by Commissioner William J. Carr, in questioning L. J. Moore, executive engineer of the San Joaquin Light and Power Corporation in the third day of the commission's hearing here yesterday.

"The question put by Commissioner Carr was: 'The thing that is bothering me, Mr. Moore, is that I don't know of any other business that is unusually profitable in a period of some visitation of a more or less severe degree in the section in which it operates, and I have been wondering if there is not something wrong with your formula, either as between your cost of power which is affected by the tie line, or the basis of your agricultural rates that results in this rather unusual condition. Have you given that any consideration?'

"Moore replied: 'I think the main difficulty is just as I have testified before—in a wet year we have ample water for making power and don't have the load.'

"Carr went on to say that it seemed to him that the power companies could 'take less profit in dry years' and that this could be accomplished by revising the tie line schedule or the agricultural rate, or both."

Employment Relief Through City Plant Rates

THE cities of Pasadena and Long Beach have been trying to alleviate unemployment ills by the use of revenues from their municipal utility plants. The city council of Long Beach on November 24th adopted an ordinance increasing gas rates from 65 to 80 cents per thousand cubic feet. Funds derived from the increased rate were to be spent in hiring workers on gas department construction under the supervision of a civic relief committee. The revenue increase is estimated at about $55,000 above the present rates.

City Manager J. W. Charleville in a report to the Board of City Directors at Pasadena recommended against an increase in utility rates, but favored the use of departmental funds in carrying on emergency work for the relief of the unemployed.

Connecticut

Unusual Method of Cross-examination Is Adopted

THE city of New Haven, in its case against the New Haven Water Company, which, it declares, desires to charge excessive rates, won a point at a hearing before the commission on November 19th regarding method of cross-examination. The commission, at the request of Corporation Counsel Samuel A. Persky, ruled that the water company should present its entire case and a transcript of all evidence should be furnished the opposing attorneys before any cross-examination should be required by them. Quoting from the New Haven *Times*:

"This means that when the company's case is finished, adjournment will have to be taken to allow time for the evidence to be typewritten and given the city and town attorneys and experts for study technically so as to be in position to refute it. Mr. Persky's motion was made after Edward E. Minor, general manager and chief engineer of the water company, had concluded a lengthy description of the company's plant and plans for the future. Mr. Persky objected to having to go on with cross-examination on such a technical mass of evidence without having a transcript of it. He asked that such recesses be taken to provide this

transcript or the case go on with privilege of cross-examination of witnesses later. Attorney William B. Gumbart for the water company objected and the commission took a short recess to discuss it. On reassembling, Chairman Richard T. Higgins announced Mr. Persky's motion was granted and the water company should put on its whole case, and when evidence is transcribed it be furnished to the opposing counsel."

The New Haven Company is asking an increase in its annual gross revenue from $1,160,602 to $1,624,501, an increase of about 40 per cent, according to a report by engineers employed by small towns outside of New Haven. They allege that there is positive discrimination against the small towns in pro-rating water costs which results in the towns paying 51 per cent more than New Haven consumers.

Counsel for the city, at the opening of the hearings, moved to dismiss the petition for higher rates on the ground that the commission lacked jurisdiction so far as New Haven is concerned. He based his claim on a section of a contract with the city which provides that no increase or change of rates can be made unless both the utility and the city agree, and if not, then the matter should be submitted to arbitration through the superior court. Furthermore, he argued, the utility law gives the commission no power over water rates in New Haven, inasmuch as it only provides power over utility company charters, but does not give any power over municipalities' charters or contracts. It was said that the contract between the city and the company is by law a part of the city charter. The commission ruled that it had jurisdiction.

District of Columbia

Rates for Teletype Service Are Submitted to Commission

THE Chesapeake & Potomac Telephone Company, according to the Washington *Post*, has submitted to the public utilities commission a schedule of rates on the new teletype service. The schedule was turned over to Corporation Counsel William W. Bride to rule on several legal questions involved. The commission was to consider whether it should approve the rates so far as they affect communications solely within the District.

Record Slash in Electric Rates Is Expected

A RECORD slash in the entire rate structure of the Potomac Electric Power Company, says the Washington *Herald*, will be ordered by the commission for 1932. Notice of intention to hold a public hearing for this purpose on or after January 20th was sent to the utility officials. The *Herald* adds:

"The present household rate of 4.2 cents per kilowatt hour is expected to be reduced to a record low figure approximating 3.6 while commercial rates are expected to be slashed in proportion. Excess profits of Pepco for 1931 are expected to total $1,500,000. Under the new sliding scale of rates recently adopted by the commission and now being contested in the courts, five sixths or $1,250,000 are to be used toward rate reduction. Based on figures for the first nine months of this year, Pepco's return is expected to approximate 9.34 unweighted and 9.86 weighted. The unweighted return is based on an estimated valuation of 57 millions of dollars while the estimated weighted return is based on a valuation of 55 millions. Pepco is expected to wage a vigorous fight against the commission's intentions to slash rates on the basis of its new sliding scale. Under the old equity consent decree which the commission abrogated the company enjoyed a return approximating 10 per cent annually during the last few years and only one half of its excess profits, amounting to $1,660,000 last year, were used toward rate reduction. Furthermore, Pepco was permitted a return of 7½ per cent on its valuation under the consent decree, whereas under the new sliding scale arrangement it is entitled to but 7 per cent return. By basing the new rates under the sliding scale method, local consumers are expected to benefit to the extent of approximately $420,000 more than they did last December when the 1931 rates were established. The commission also expects to save the public thousands of dollars by passing up its old custom of holding rate hearings in December. In 1929, the commission underestimated Pepco's December return by $150,000 Last year it overestimated the amount by $80,000."

The utility company has started suit in the District supreme court to enjoin the commission from introducing a new sliding scale which would reduce the rate of return. The utility won a preliminary skirmish on November 16th when Chief Justice Alfred A. Wheat denied a motion asking that the bill be dismissed, thereby requiring the commission to file an answer.

Illinois

City Is Deprived of Rate Reduction Because of Franchise Fight

THE city of Decatur was not included among several Illinois cities which were allowed a gas rate reduction by the commission recently because of a controversy over the gas franchise of the Illinois Power & Light Corporation. If the city had petitioned for a reduction in gas rates, it would have been admitting the existence of a franchise for the utility to distribute gas. The company could not petition for a reduction without starting an argument with the city about the existence of a franchise.

The city council had voted that the utility held no gas franchise because no record was found of the acceptance of the franchise when it was drawn thirty-five years ago. As a result of the failure of the city to secure rate reductions under the new natural gas plan, says the Decatur *Review*, two carloads of equipment and material for building the mains from the natural gas pipe line across the river to the city gas plant were sent to Champaign to carry on similar work there.

A resolution was submitted to the council, after the action by the state commission, proposing that rates recently offered by the company for service with mixed natural and manufactured gas should be accepted. It provided also that the right to seek still lower rates and to demand a new franchise agreement should be reserved to the city. The council, however, by a vote of three to two refused to pass the resolution. Instead, a resolution was adopted directing the corporation counsel to ask the utility, quoting from the *Herald:*

"Why, in view of recent action before the Illinois Commerce Commission, the company has not filed its schedule of rates? Why Decatur is not given a 10 per cent reduction in rates as Springfield and Peoria have? Why immediate service with straight natural gas is not given, instead of mixed gas? And, to file an up-to-date appraisal of its property used for gas manufacture here, with the council and the Illinois Commerce Commission."

Lower rates in Springfield are explained by the fact that straight natural gas is used. It was explained, when the company submitted its stipulation, that mixed gas would be used in Decatur because the company wished to be sure of the continuity of service. Distribution over distances as great as those covered by the new pipe line was said to be an adventure.

The resolution adopted is looked upon as an attempt by the city council to put upon the company any responsibility for further delay in rate reduction. It was said that acceptance of rates formally in a resolution would put the city on record as tacitly agreeing that the company had a valid franchise.

The *Herald* states that a petition for permission to put into effect the schedule of reduced rates for gas service as soon as connections can be made to bring in natural gas would be filed by the utility company with the commission following a request by the Association of Commerce.

Indiana

Judges Will Hear Objections to Vincennes' Water Rates

JUDGE Robert C. Baltzell of the Federal court has granted a motion by the Vincennes Water Supply Company for a hearing of its plea for an injunction against the public service commission to restrain enforcement of a rate reduction order. The hearing was set for December 21st before a three-judge court, which will decide the question of a temporary injunction.

The utility maintains that the commission, in fixing a rate valuation of $800,000 with a return of 5 per cent, invaded the jurisdiction of the United States Circuit Court of Appeals which, on April 17, 1929, found a value of $1,032,000 and allowed a return of 7 per cent. It is contended by the commission and the city of Vincennes that this is a separate and distinct case. The Indianapolis *News* informs us:

"It was agreed, with approval of Judge Baltzell, that the Vincennes Water Company would continue collecting rates under the schedule in effect before the commission passed its recent order, but that if findings finally were made in favor of the commission's order for reductions, the excess payments would be refunded to patrons. Rates of the company will continue in effect until some action by the court on the matters pending, it was announced."

Iowa

Therm Basis Dropped and Customer Education Started

THE Des Moines Gas Company, according to the Des Moines *Register*, has come to an agreement with City Solicitor George P. Comfort not to inaugurate its new plan of optional billing on the therm basis, but bills will contain a translation of the cubic foot measurement into therms in order to educate customers and familiarize them with the therm basis.

It seems that the city ordinance does not permit charging on any other basis than the cubic foot basis. C. A. Leland, Jr., vice president and general manager of the gas company, is quoted as saying, however, that the company officials believe the therm method will be most generally used in the future, and they want the public to understand both methods.

Kansas

Supreme Court Will Hear Gas Rate Appeal

THE Supreme Court of the United States on November 23rd announced that it would hear arguments in the case involving the reasonableness of the 40-cent rate charged by the Cities Service Gas Company to local gas distributing companies. The *United States Daily* describes the situation as follows:

"The issue is involved in a case in which the company, as owner of a natural gas distributing system in the city of El Dorado, Kansas, sought to overthrow an order of the public service commission denying its application for an increase in consumer rates. The present rates, it is claimed in its jurisdictional statement, do not produce a return sufficient to pay operating expenses, without anything whatever for return or depreciation.

"The complaint of the company was dismissed by the United States District Court for the district of Kansas on the ground that it has not exhausted its remedy before the public service commission. In denying the company's application for increased rates, the commission held that it was not supported by sufficient evidence, since it had failed to introduce evidence proving to the satisfaction of the commission the reasonableness of the price of 40 cents per thousand cubic feet paid by the plaintiff to the Cities Service Gas Company for its product at the 'city gate.'

"Before the company can seek the aid of Federal courts, it was held below, it must show the reasonableness of the price paid at the 'city gate' to an affiliated company for gas which it distributes to it's consumers. The fact that the rate at the 'city gate' is an interstate rate does not preclude inquiry by the state commission, it was held, as to its reasonableness, for the purpose of fixing the local rates at El Dorado.

"In its appeal the company complains that the lower court erred in not finding that the reasonableness of the 40-cent rate was adjudicated by the supreme court of Kansas in the so-called Wichita Case. It is also argued that it need not justify its contract for the supply of gas."

Michigan

Agreement on Higher Rates Ends Litigation

THE city of Gladstone and the Escanaba Power and Traction Company, according to the Gladstone *Reporter*, have reached an agreement which brings to an end a controversy over the rate increases that has been before the public utilities commission and the courts for a period of two years. The city agrees to accept the higher rates without further legal action, and the utility agrees to purchase power lines and other city equipment which is used to bring current to the city switchboards. The power company in the past has delivered current only to the city limits.

The appeal from the commission decision is to be dropped and the city is to purchase power from the company for a period of five years. There is a renewal clause for a further period of two years. The company in addition is required to lease a pole line from the city at a fixed rental established by the contract.

Minnesota

Commission Asks Appropriation for Telephone Investigation

THE railroad and warehouse commission has asked the Minnesota executive council for $30,000 to pay the cost of a statewide telephone valuation says the *United States Daily*. The request was taken under advisement. The legislature this year refused to approve an appropriation of $100,000 for similar work. The *Daily* adds:

"O. P. B. Jacobson, chairman of the commission, explained that though the commission has a large mass of figures on telephone values, compiled by D. F. Jurgensen, chief engineer, this material is not complete enough for action. He said the additional money would be used to gather supplementary information and complete Mr. Jurgensen's figures. Charges that the commission is guilty of nonfeasance have been made to Governor Olson by Mrs. Helen O'Brien Kesser, St. Paul, in a petition asking removal of the commissioners. Her petition is based on alleged failure of the commission to secure a reduction on telephone rates, and alleges that the Jurgensen figures are complete and show such a reduction should be made."

Mississippi

State Tax on Interstate Gas Lines Is Illegal

THE United States Supreme Court on November 23rd affirmed a decree by three judges in a Federal district court restraining the tax commission of the state of Mississippi from enforcing a privilege tax law of that state against the Interstate Natural Gas Company, on the ground that it amounted to a burden on interstate commerce.

Mr. Justice Holmes, delivering the opinion of the court, explained that the company had a trunk line extending from gas fields in Louisiana through Mississippi and back to Louisiana. It sells gas in both states. The gas flows continuously from the gas fields in Louisiana, and for much the greater part of the way in interstate commerce. He said in part:

"But the appellants rely upon business done under two similar contracts made in New York to show that there was intrastate commerce in Mississippi that may be taxed without burdening the main activity that the state cannot touch. Ozark Pipe Line Corp. v. Monier, 266 U. S. 555, 563; East Ohio Gas Co. v. Tax Commissioners of Ohio, 283 U. S. 465, 470. Distributing companies tap the plaintiff's pipes near Natchez and the town of Woodville. The gas withdrawn by the distributors is measured by a thermometer and a meter furnished by the plaintiff, which is the only way in which it can be measured. The pressure of the gas is reduced by the plaintiff before it passes into the purchaser's hands. The work done by the plaintiff is done upon the flowing gas to help the delivery, and seems to us plainly to be incident to the interstate commerce between Louisiana and Mississippi. The plaintiff simply transports the gas and delivers it wholesale not otherwise worked over other than to make it ready for delivery to the independent parties that dispose of it by retail. State ex rel. Barrett v. Kansas Gas Co. 265 U. S. 298; Public Utilities Commission v. Landon, 249 U. S. 236, 245; Ozark Pipe Line Corp. v. Monier, 266 U. S. 555."

Missouri

Demands Heat without Power Service

A NEW rate schedule of the Union Electric Light & Power Company contains a rule that steam will not be sold to customers who do not use the company's electric service. This rule has been attacked by Sam E. Grodsky, manager of the Missouri Bag Company, and the commission is investigating the question whether it is a proper rule for the utility to enforce.

The contention is made that the rule is discriminatory. Utility officers say this customer sought discrimination for himself and

that started the controversy. Grodsky declared that the Union Electric Company refused to turn on the steam to the bag company's building this fall because he transferred his firm's electric business to the Laclede Power & Light Company. The St. Louis *Times* states:

"William E. Hoeflin, industrial engineer employed by Union Electric, declared that the dispute between the bag company and the power company started when Grodsky wanted to deduct a little more than $1 from the lighting bill at his home. When this was refused, Hoeflin said, Grodsky threatened retaliation by turning over the bag company's business to Laclede. Grodsky denied this. He admitted he did complain to Union Electric that a bill for one month's electric service at his home was unreasonable, but asserted that he transferred his company's electric business to Laclede because he believed the latter concern would supply power at lower rates. Hoeflin told him, Grodsky said, that Union Electric could refuse to sell his company steam if it discontinued the electric service. The Union Electric engineer testified that when Grodsky insisted on being given the reduction in his home electric bill, he told the bag company manager that Union Electric would not discriminate in favor of or against any of its customers."

New Jersey

New Telephone Rates Proposed for Dial Service

THE New Jersey Bell Telephone Company has proposed new rate schedules for Newark, Irvington, the Oranges, and Maplewood which would afford reductions to most subscribers and slight increases to others. The rates, if not disapproved by the public utility commissioners, will be effective June 1st when dial telephone service will become general in those communities. G. W. McRae, vice president and general manager of the company, is quoted in the Newark *Star-Eagle* as saying that the new schedules would mean a reduction in the company's gross and net revenue. This paper adds:

"Restricted scope of the present local service will be abolished and all subscribers will be given extended scope service, enlarging the local call area for present restricted scope service subscribers to the area now available only under extended scope rates.

"In addition, all four-party lines will be abolished and a two-party service will be available at a lower rate than the present four-party service rate.

"High lights of the new schedule include:

"Two-party residence service on a measured basis at a rate 25 cents a month lower than the present four-party service rate.

"Charges for 10-cent and 15-cent toll calls will be reduced 10 per cent to flat rate subscribers and billed as 'message units' a 10-cent call as two units, a 15-cent call as three units. Most measured rate users will get a similar reduction due to these calls being counted as units in their monthly message allowance.

"Those toll calls will be dialed directly and automatically counted and timed, resulting in service to 500,000 North Jersey telephones as swift as on local calls."

Public Service Reduces Rates

A NEW schedule of electric rates for residences, effecting a reduction of one cent per kilowatt hour on the block of consumption from forty to fifty kilowatt hours a month, has been filed with the commission by the Public Service Electric and Gas Company. It is reported that this schedule will result in a saving of 10 cents monthly for users of fifty kilowatt hours or more monthly. The reduction is expected to mean a saving to the public of $600,000 annually.

The Public Service Company has also filed reduced rate schedules for gas supplied by three recently acquired subsidiaries which are expected to save about $165,000 a year for consumers in Monmouth county and in South Jersey. The New York *Times* says:

"The present electric rate is 9 cents per kilowatt hour per month for the first twenty kilowatt hours, 8 cents for the next thirty, up to fifty, and 3 cents per kilowatt hour above that. In the new schedule there is no change in the rates on the first group or in that above fifty, but the group from twenty to fifty is split into two. The group from twenty to forty remains at 8 cents, while that from forty to fifty is cut to 7 cents. This is the first schedule to affect consumers of less than fifty kilowatt hours monthly."

New York

Further Trial of Edison Electric Rates Is Asked

THE New York Edison Company and its affiliated companies have filed an answer with the commission to a complaint by Mayor James Walker against its electric rates. The companies ask that the complaint be dismissed without hearings or further proceedings. Quoting from the New York *Evening Wall Street Journal:*

"Experience with the new rates, the companies said, is yet fragmentary since they took effect on bills only in August of this year. Such as it is, it indicates that the $5,500,000 reduction in the companies' revenue estimated in putting the rates into effect will be reached or exceeded. The complaint before the commission alleges no facts or circumstances not fully set forth in the rate proceedings and asks in essence only that the same matters be reviewed and reconsidered, the answer declares.

"The answer says that experience under the new rates has not yet advanced to the point where significant comparative data could be derived.

"Pointing out that the form and amounts of the rates complained of were advised by the commission, and were not those proposed by the companies; that the commission indicated its realization that some of the rate changes were in a sense experimental; and that adjustments or revisions should await actual experience, the companies argue that the best interests of the customers, and fairness to the companies require that the rates have a reasonable and adequate period of trial before further proceedings."

Westchester Company Offers Rate Reduction

THE Westchester Lighting Company, during its controversy with several communities over electric rates, has offered a new schedule of rates cutting the existing scale from 20 to 33 per cent. The new schedule, according to company officials, would save customers about $1,000,000 a year.

The schedule calls for a charge of $1 for the first five kilowatt hours; 7 cents a kilowatt hour for the next twenty; 6½ cents a kilowatt hour for the next 145, and 5 cents a kilowatt hour for all current in excess of 200 kilowatt hours. The New York *Times* says:

"The Westchester communities began their drive for lower rates last August when New Rochelle filed, through Mayor Otto, its application for a reduction of about 28 per cent. It was joined by other communities and by New York city on behalf of the 100,000 consumers in the Bronx. Soon afterward the public service commission began public hearings at which counsel for the applicants sought to obtain from the company detailed information concerning its methods of setting up a rate structure. During the hearings an effort was made to induce the commission to promulgate a temporary rate cut, pending the outcome of the hearings on the original application. It was contended that the company's own financial reports were sufficient ground for such action because they indicated that far more than a reasonable return was being obtained from its properties. Action on a motion for the temporary reduction was pending before Mr. Maltbie when conferences were called in an effort to avoid a formal rate case, with its attendant delays and litigation. The new rate schedule was the direct result of these meetings. The commission still must decide whether the company's customers will continue to have two meters, as at present, or whether a single-meter system will be established."

Patrick J. Rooney, corporation counsel of New Rochelle, in a memorandum filed with the commission, according to the New York *Herald-Tribune*, has served notice that the reduction offered is unsatisfactory. While approving the principle of a downward revision along proportional lines for the entire county, New Rochelle and other communities that have joined in a complaint against existing rates object to the company's proposal on the ground that it would increase the bills of one third of the consumers and cut in half the number of kilowatt hours supplied for the initial payment of $1, says Mr. Rooney. He suggested an optional schedule providing for a charge of $1 for the first ten kilowatt hours, 8½ cents for the next thirty; 6½ cents for the next 160, and 5 cents for each kilowatt in excess of 200.

Utility Consumers' League Would Force Consolidation

STEPS may be taken to compel unification of the three utility corporations supplying gas to Kings county, in the event that the Brooklyn Borough Gas Company refuses to reduce its rates to a schedule approximating that set by the Utility Consumers League, according to an announcement by Joseph B. Milgram, secretary of the league, reported in the Brooklyn *Eagle*.

At any rate, if the gas company will not agree to a lower rate for domestic consumers, a revaluation of the utility property at present-day values may be demanded.

Ohio

Testimony Is Completed in Columbus Gas Rate Case

ALL testimony in the rate appeal case of the Columbus Gas & Fuel Company, which was filed with the public utilities commission about two years ago, has been concluded. The Columbus *Dispatch* states that a decision is expected by April 1, 1932.

The company is contending for a retail rate in the city of approximately 69 cents, while the city is fighting that claim. The utility originally appealed from a city ordinance establishing a 48-cent rate which was to have become effective in November, 1929. The ordinance would have run for five years. The company and the city, after the filing of the application, made several legal maneuvers and the city in February, 1930, asked to continue the proceedings indefinitely until a decision had been given in Federal court. The decision by the United States Circuit Court of Appeals is still awaited. A continuance was granted and the company appealed for an emergency temporary rate. This was refused by the commission. In December, 1930, the first exhibits were entered in the proceedings before the commission.

The relationship between the Columbia Gas & Electric Corporation and the Ohio Fuel Gas Company, which supplies the gas at the city gate, came in for much attention. The commission in the Dayton case had ruled that it had authority to inquire into such intercorporate relations in reaching a decision on rates. Quoting from the Columbus *Dispatch:*

"At once the local case assumed gigantic proportions. Instead of its being merely an inquiry into the local company's financial and physical operations, the case became one involving the Ohio Fuel Gas Company which serves cities all over the state and also the United Fuel Gas Company of West Virginia, which supplies gas at wholesale prices to the Ohio Fuel Gas Company."

The hugeness and many ramifications of the proceedings is indicated by the remark attributed to Commissioner Frank Geiger that, "Every question ever presented in any rate case and some that were never before presented in any case has arisen in this one."

Akron Cancels Gas Franchise

MAYOR G. Lloyd Weil of Akron has notified the East Ohio Gas Company that the city council has voted to cancel the franchise, effective the last of next May. The ordinance canceling the franchise was enacted over the mayor's veto. The mayor, says the Akron *Beacon Journal,* does not believe that this is the correct method to pursue in seeking a lower gas rate. It is expected that the new council will be asked to repeal the franchise cancellation measure. The new administration is pledged to obtaining lower gas rates, and will carry forward negotiations as rapidly as possible, but C. Nelson Sparks, mayor-elect, is said to be in favor of amicable negotiations rather than the use of an iron fist.

The city council is on record requesting the service director to institute a 10 per cent reduction in water rates to domestic consumers but it has been admitted by members of the council that this is meaningless inasmuch as the law department has held that the council has nothing to say about the price for which water shall be sold, that being exclusively the right of the service department and the water superintendent.

Pennsylvania

Philadelphia Gas Rate Is Fixed by Commission

THE municipal gas commission has fixed the 1932 retail gas rate at 95 cents per thousand cubic feet, over the protest by Controller Will B. Hadley, who asked the commission to reduce the rate to 90 cents. The controller used as a basis for his rate, facts gleaned from an audit of the books of the Philadelphia Gas Works Company, which operates the municipally owned gas works. Quoting from a recent Philadelphia *Record:*

"Referring to the controller's demand for a reduction of the gas rate, the resolution dismissed it as being based on a disputed construction of the accounting practice of the Philadelphia Gas Works. It upheld the practice followed by the company in the face of the controller's contention that it resulted in improperly charging against current operating costs $431,000 which should be available for reduction of the gas rate."

The resolution by the gas commission was to be laid before the city council.

The Latest Utility Rulings

Holding Company Transaction Is Condemned by the Vermont Commission

THE Green Mountain Power Corporation of Vermont is controlled by the Peoples Light & Power Corporation of Delaware. There is not much doubt about that. The Peoples concern owns all of the stock of the Green Mountain concern. They have a president and four out of seven directors in common. Recently the Green Mountain company asked for authority to issue $322,000 in 5 per cent gold bonds. The Vermont commission not only refused, but revoked authority previously granted for the issuance of securities up to $405,160. Why? That is where the Peoples company comes in.

It appears that Vermont laws require commission approval of all securities issued by domestic operating utilities except short-term notes payable within one year. The Green Mountain company operates gas and electric properties in Vermont. In the fall of 1930 it sold an issue of these short-term notes to the amount of one and a half million dollars, for the stated purpose of financing the retirement of unfunded debts and for certain improvements and other corporate purposes. Most of the proceeds from this issue, however, were turned over as an unsecured loan to the parent concern.

The Peoples concern also controlled an Arizona utility and obtained a smaller loan from it. When the Vermont directors of the Green Mountain company learned in more detail of these loans they objected, whereupon it was agreed that the parent should give the common stock of the Arizona subsidiary to the Green Mountain company as collateral security.

More recently the Green Mountain company sought authority to issue securities to meet the maturity of its short-term notes. The commission found that the Arizona company's stock was worthless, leaving the loan from the Green Mountain company to the Peoples company still unsecured. The commission refused the authority sought but retained jurisdiction pending a further hearing. At the hearing it developed that the Green Mountain company had accepted a note of the Texas Public Service Company, another subsidiary of Peoples, endorsed by the parent company in liquidation of the parent's debt to its Vermont child.

Again the commission refused authority requested and revoked authority for securities previously granted. The commission took the position that the statutory exemption of short-term notes from commission approval was intended merely to provide utilities with a means for temporary financing of pressing corporate and "legitimate" needs. The loan by the Vermont utility to the parent company did not, in the opinion of the commission, fall within this category and was accordingly held to be *ultra vires*. The commission further pointed out that the Texas subsidiary was not subject, under prevailing Texas law, to regulatory supervision of its securities. Under such circumstances the commission did not feel that it would be justified in approving of a bond issue to pay for money to lend to a parent company, where the loan was secured by the note of such an unregulated foreign subsidiary. For the Green Mountain company's directors to accept the Texas note merely evidenced poor management upon the part of the officials and in no way bound the commission. The commission further stated:

"We find that the Vermont directors, Hill and Gleason, knew nothing about this loan from Green Mountain to Peoples until some time in August. These officials and their subordinates have worked loyally and efficiently for the petitioner. The pity of this situation is that their efforts have been seriously affected by the domination and exploitation of this operating company by their New York associates. Vermont utilities have no need of such exploitation, which, if not checked, may ultimately be felt in rates and service. Notwithstanding the appraisals and checks on value that this commission has been able to make on this operating company since the enactment of No. 85 of the Acts of 1925, this case illustrates how through the holding company this kind of regulation may be seriously interfered with."

The action of the commission reduces the potential liabilities of the Green Mountain company by $727,160, and was said to be the only method by which the investment of the Vermont company in the utility properties under consideration could now be protected. *Re Green Mountain Power Corp. No. 1689.*

Therm Base for Metered Gas Is Forbidden

A SO-CALLED "therm rate" by which gas is measured according to its heating content, rather than its cubic volume, promises to give rise to a conflict of regulatory opinion closely parallel to a similar conflict concerning the service charge for gas and electric service. Admittedly the service charge is a more scientific method of rate making, but some commissions such as the New York commission, have gone on record as opposing its adoption because of the confusion, misunderstanding, and, in some cases, antagonism which it creates among the utility's consumers. Other commissions, such as the Wisconsin commission, have endorsed the service charge because of its accuracy in avoiding discrimination between patrons.

Now comes the therm rate, which has attracted considerable attention since the recent nation-wide introduction of natural gas in vicinities previously served by artificial gas. The committee on public utility rates of the National Association of Railroad and Utilities Commissioners in their report to the recent convention at Richmond, Va., recommended the adoption of the therm system by the state commissions. There was a report by a minority, which included a representative of the New York commission, which opposed the use of the therm as a basis for measuring gas. The first official regulatory tribunal to espouse the minority's view appears to be the Indiana commission, which recently prohibited the measurement of gas by the use of the therm. The commission conceded the theoretical accuracy and scientific advantage of this basis, but criticized the methods which it says have been used by utilities in requiring its use, and in discontinuing the much more easily understood cubic foot measurement. The Indiana commission's order followed an investigation which it initiated after receiving protests from thirty-two counties where the new therm system had been introduced. The neighboring state commission of Illinois went on record some months ago as approving of the therm basis. *Re Gas Rates, No. 10620.*

Commission Allowance for Going Value and Obsolescent Gas Property Is Reversed on Appeal

A RECENT decision by the Missouri Supreme Court in the Laclede Gas Light Company Case reversed the state commission's order. The court sustained the commission's allowance of 7½ per cent return as reasonable. It

was the commission's finding as to the company's rate base that moved the court to vacate the commission's order. There were two features of the court's opinion that are deserving of special mention:

1. The court held that the utility should not be permitted to charge for depreciation of retired gas lamps which had been replaced by electric lights. The opinion stated:

> "The abandonment of property which is never replaced but is superseded by another instrumentality, as gas lamps by electric lights or by another agency or company, is an extraordinary supersession. Its loss is 'one of the hazards of the game,' just as the extraordinary increase in values following the war was an unexpected gain."

2. The court held that the commission's allowance for going value of 14 per cent of the reproduction cost less depreciation of the company's physical properties was excessive. The court suggested that an artificial gas company under modern conditions is not entitled to a high going value because it is possibly a moribund industry. The opinion stated on this point:

> "It started as a lighter of streets and houses. Its mains were laid for that purpose. These lights have been steadily abandoned and the field surrendered to electricity, into which enterprise the Laclede Company itself as its own competitor is entering. Electricity is encroaching upon its field for power and heat. While losing to electricity in those respects it has no doubt found additional customers for cooking. Nevertheless, gas from powdered coal, the record shows, threatens to render obsolete its machinery for manufacturing its present gas. Common knowledge shows us that natural gas is a still more serious threat to render useless all its manufacturing plants."

State ex rel. St. Louis v. Public Service Commission.

Mail Carriers By Motor Not Always Entitled to a Certificate Preference

ORDINARILY, as between two or more rival applicants for a motor carrier certificate, it has been the policy of the Colorado commission to grant authority, all other things being equal, to that applicant who might have a contract to carry United States mail in the territory involved, because it tends to make the operations more dependable. Such a certificate was granted to one Weldon Beach. More recently, however, Mr. Beach lost the contract for carrying United States mail by reason of a lower bid having been made by one J. J. McMichael. Subsequently, Mr. McMichael applied for a certificate to engage in operations competitive to Mr. Beach's existing service.

The question now arose, should the commission extend its policy still further by permitting certificates to follow the holders of mail contracts. The commission, in denying the application of Mr. McMichael, decided in the negative. The commission held that once a certificate has been issued to an applicant holding a mail contract, a competitive certificate will not be subsequently granted to a rival carrier merely because of the latter's success in securing the mail contract. The commission stated: "Obviously we could not go on issuing certificates to every man who happened to get the mail contract." *Re McMichael, Application No. 1823, Decision No. 3726.*

Utility Operations by State Agencies Not Subject to Regulation

SIGHT-SEEING tours by motor conducted by the regents of the University of Colorado, chiefly for the benefit of several thousand students, were held recently by the Colorado commission to constitute the university a com-

mon carrier for hire, notwithstanding the fact that such operations were admittedly incidental to the main function of the university. The commission, however, declined to take jurisdiction of such operations and held that it had no jurisdiction to regulate common carrier sight-seeing operations by an agency of the state as distinguished from similar operations by private individuals, corporations, or even municipal corporations. *Re University of Colorado. Case No. 595, Decision No. 3704.*

Service Cannot Be Discontinued in Order to Collect Prior Undercharge

LAST spring, Mr. R. A. Jenkins, of Summit, New Jersey, received a bill for water service for the first quarter of the year 1931. The bill was $26.37. Insomuch as this amount was nearly ten times what he usually paid, Mr. Jenkins called up the Commonwealth Water Company and asked for an explanation. He asked the company just how much water he had used during the quarterly period. The company explained that he had used only 1,500 cubic feet, which was an average consumption for the type of residence served, but that he had been charged on the basis of 11,500 cubic feet. The company explained that the extra consumption was charged on account of some error occurring in the company's accounting department, Mr. Jenkins had not previously been billed for some 10,000 cubic feet which had actually been consumed on his premises. The $26.37 bill, therefore, represented an effort by the company to recoup the amount lost by these previous errors in billing.

Mr. Jenkins refused to pay the bill and the company threatened to discontinue service, whereupon Mr. Jenkins complained to the New Jersey commission. The commission found that as Mr. Jenkins had used only 1,500 cubic feet during the first quarterly period of 1931, the bill rendered him for service during that period was incorrect, and the company should not be allowed to discontinue service as long as Mr. Jenkins was willing to pay for actual consumption during the quarter in question. And as far as the recoupment for previous errors in billing was concerned, the commission said that "the customer cannot be held for the errors of a company's employees." *Jenkins v. Commonwealth Water Co.*

Wholesale Power Concern Is Not Obliged to Serve the Public

ANOTHER step was accomplished in the electric power connection now being worked out between Albany and greater New York, when the New York Public Service Commission granted authority for the routing of a transmission line by a wholesale power company through certain intermediate communities along the Hudson which are served by local distributing systems. The purpose of the project is to establish a more efficient interexchange of power through the eastern section.

An objection was raised by a local town official to the granting of the necessary certificate unless the wholesale company should be required to sell directly to the public in the local communities through which the line would be routed. This objection was met, however, by the fact that the local franchises granted to the applicant imposed upon the latter no such obligation to serve. This being the case, the commission ruled that it had no power to increase the original power or obliga-

tion of service granted in franchises by local authorities, but that its jurisdiction was limited to denial or approval of the exercise of such franchises. *Re New York Power & Light Corp. Case Nos. 6822, 6823.*

Other Important Rulings

A CALIFORNIA statute enacted in 1931 (Chap. 638) requires that a motor carrier's agency license must be obtained when transportation by a motor carrier is proposed to be sold "to the border line of the state of California," even though one of the points between which such transportation is sold "is without the state." In granting such a motor carrier's agency license, (sometimes called a "ticket seller's license,") the California commission recently ruled that an applicant will not be granted a license for a "branch office" where transportation is sold for the applicant by an agent on a commission basis. In such a situation the commission pointed out that the local agent must obtain his own license. *Re Independent Stage Co. (Cal.) Decision No. 24098, Application No. 17621.*

A complaint asking that the zones of two bus carriers should be extended to coincide with the expansion of the limits of a village was denied by the New York Public Service Commission, where the result of such an extension would cause considerable loss of revenue to the companies which were already operating at a deficit. *Re Hempstead Bus Corp. et al. (N. Y.) Case No. 6941.*

The New Hampshire commission has denied an application by an individual for permission to render butane gas service in twenty-five small communities. The commission held that it would clearly not be for the public good to grant authority to one not sufficiently financially responsible to exercise the rights in a suitable manner if granted. *Re Strout (N. H.)*

The Indiana commission has dismissed a petition by the town of North Manchester for authority to condemn that portion of the electric plant of the Northern Indiana Power Company which is located within the town, because, in view of the opinion of the majority of the commission, such a severance of the company's system would not be economically feasible. Commissioners Singleton and Ellis, dissenting, were of the opinion that the town should be permitted to take over the property even though it would result in condemning only a portion of the company's system. The result of the majority decision, in the opinion of Commissioner Singleton, will lend support to the system-wide basis of establishing rates for public utilities operating properties in more than one municipality. This system-wide basis has been rejected by the commission in other cases. *North Manchester v. Northern Indiana Power Co. (Ind.)*

The West Virginia commission has held that an agreement between the city of Wheeling and the Natural Gas Company of West Virginia for rates to be effective from 1924 to 1929 did not contemplate that the rates in effect prior to 1924 should be reinstated at the expiration of the agreement in 1927. The point arose during a proceeding, now pending, by the city questioning the reasonableness of the contract rates which have continued in effect since the expiration of the agreement in 1927. *Wheeling v. Natural Gas Co. of W. Va. (W. Va.)*

NOTE.—The cases above referred to will be published in full or abstracted in *Public Utilities Reports.*

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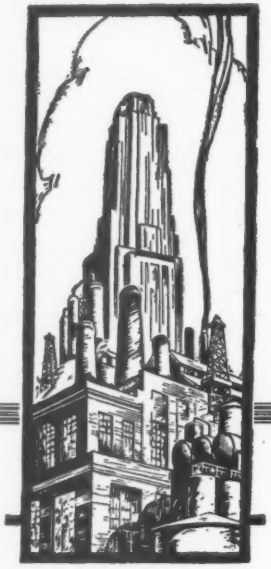

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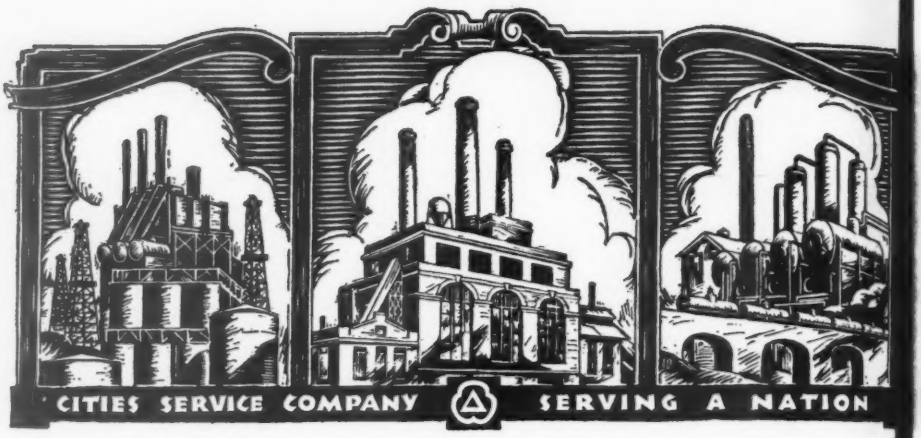

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